

Amy Finley, 4/21/2014

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

2 WESTERN DIVISION

3 HEALTHY ADVICE :
NETWORKS, LLC, :
4 :
Plaintiff, :
5 : Case No.
vs. : 1:12-CV-610

6 :
CONTEXT MEDIA, :
7 INC., :
:
8 Defendant. :

9 Videotaped deposition of AMY FINLEY, a
10 witness herein, taken by the defendant as
11 upon cross-examination, pursuant to the
12 Federal Rules of Civil Procedure and pursuant
13 to notice of counsel as to the time and place
14 and stipulations hereinafter set forth, at
15 the offices of Mr. Hankinson, Keating,
16 Muething & Klekamp, One East Fourth Street,
17 Suite 1400, Cincinnati, Ohio, at 9:30 a.m.,
18 Monday, April 21, 2014, before Deanne
19 Cartwright, a Notary Public within and for
20 the State of Ohio.

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Amy Finley, 4/21/2014

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APPEARANCES

FOR THE PLAINTIFF: AARON M. BERNAY, ESQ.

Frost Brown Todd

301 East Fourth Street

3300 Great American Tower

Cincinnati, Ohio 45202

FOR THE DEFENDANT: THOMAS HANKINSON, ESQ.

Keating Muething &

Klekamp

One East Fourth Street

Cincinnati, Ohio 45202

ALSO PRESENT: Paul Jahn, videographer

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3

1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 AMY FINLEY, a witness herein, may be taken at
5 this time by the defendant as upon
6 cross-examination and pursuant to the Federal
7 Rules of Civil Procedure and notice to take
8 deposition, under notice all other legal
9 formalities being waived by agreement; that
10 the deposition may be taken in stenotype by
11 the Notary Public Reporter and transcribed by
12 her out of the presence of the witness; that
13 the transcribed deposition was made available
14 to the witness for examination and signature
15 and that signature may be affixed out of the
16 presence of the Notary Public-Court Reporter.

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Amy Finley, 4/21/2014

4

1	INDEX			
2	WITNESS	DIRECT	CROSS	RE- DIRECT
3				RE- CROSS
4	AMY FINLEY			
5	BY MR. HANKINSON:		7	246
6	BY MR. BERNAY:	245		
7	EXHIBIT IDENTIFIED			PAGE
8	Exhibit 208			9
9	Exhibit 209			23
10	Exhibit 210			92
11	Exhibit 211			95
12	Exhibit 212			108
13	Exhibit 213			115
14	Exhibit 214			119
15	Exhibit 215			123
16	Exhibit 216			126
17	Exhibit 217			143
18	Exhibit 218			151
19	Exhibit 219			176
20	Exhibit 220			177
21	Exhibit 221			197
22	Exhibit 222			203
23	Exhibit 223			211
24	OBJECTIONS			PAGELINE
	MR. BERNAY:		10	2
	MR. BERNAY:		17	7
	MR. BERNAY:		24	9
	MR. BERNAY:		34	3
	MR. BERNAY:		36	13
	MR. BERNAY:		45	17
	MR. BERNAY:		49	13
	MR. BERNAY:		51	1
	MR. BERNAY:		53	9
	MR. BERNAY:		60	7
	MR. BERNAY:		63	3
	MR. BERNAY:		64	5
	MR. BERNAY:		65	2
	MR. BERNAY:		66	16
	- - -			

Amy Finley, 4/21/2014

5

1	INDEX CONTINUED		
2			
3	OBJECTIONS	PAGE	LINE
4	MR. BERNAY:	68	7
5	MR. BERNAY:	68	13
6	MR. BERNAY:	70	11
7	MR. BERNAY:	71	11
8	MR. BERNAY:	82	12
9	MR. BERNAY:	83	2
10	MR. BERNAY:	87	11
11	MR. BERNAY:	87	20
12	MR. BERNAY:	101	15
13	MR. BERNAY:	108	1
14	MR. BERNAY:	118	12
15	MR. BERNAY:	120	21
16	MR. BERNAY:	125	16
17	MR. BERNAY:	134	4
18	MR. BERNAY:	135	11
19	MR. BERNAY:	137	23
20	MR. BERNAY:	138	8
21	MR. BERNAY:	148	9
22	MR. BERNAY:	152	19
23	MR. BERNAY:	153	7
24	MR. BERNAY:	154	12
25	MR. BERNAY:	155	5
26	MR. BERNAY:	156	15
27	MR. BERNAY:	161	16
28	MR. BERNAY:	162	7
29	MR. BERNAY:	172	19
30	MR. BERNAY:	175	3
31	MR. BERNAY:	175	5
32	MR. BERNAY:	185	10
33	MR. BERNAY:	185	18
34	MR. BERNAY:	186	11
35	MR. BERNAY:	187	21
36	MR. BERNAY:	188	4
37	MR. BERNAY:	188	22
38	MR. BERNAY:	191	1
39	MR. BERNAY:	193	4
40	MR. BERNAY:	195	18
41	MR. BERNAY:	196	20
42	MR. BERNAY:	208	14
43	MR. BERNAY:	209	5
44	MR. BERNAY:	218	4

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Amy Finley, 4/21/2014

6

1 INDEX CONTINUED

2

OBJECTIONS

PAGE LINE

3

MR. BERNAY:

218 15

4

MR. BERNAY:

219 17

MR. BERNAY:

220 23

5

MR. BERNAY:

237 17

MR. HANKINSON:

245 14

6

MR. HANKINSON:

245 20

7

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7

1 VIDEOGRAPHER: We're on the
2 record. Would the court reporter swear in
3 the witness, please?

4 AMY FINLEY,
5 a witness herein, of lawful age, having
6 been first duly sworn as hereinafter
7 certified, was examined and testified as
8 follows:

9 CROSS-EXAMINATION

09:37 10 BY MR. HANKINSON:

11 Q. Good morning.

12 A. Good morning.

13 Q. Please state your name and spell
14 your last name.

15 A. Amy Finley, F-I-N-L-E-Y.

16 Q. Thank you for coming in again.

17 We appreciate your time. My name is Tom
18 Hankinson. I believe we met very briefly
19 previously but Mr. O'Brien, Richard O'Brien,

09:39 20 was asking you questions at the last --

21 A. Correct.

22 Q. -- deposition. Do you remember
23 generally the guidelines and -- and ground
24 rules that he laid out before you started

Amy Finley, 4/21/2014

8

1 that?

2 A. Yes.

3 Q. Those same ones will apply
4 today. If you have any questions about that,
5 let me know.

6 A. Okay.

7 Q. If you answer a question, I'm
8 going to assume that you understood it. Are
9 you okay with that?

09:39 10 A. Yes.

11 Q. And if you don't understand a
12 question please ask me to either rephrase it
13 or repeat it or ask me what I mean by
14 whatever is not being understood. Okay?

15 A. Okay.

16 Q. At your previous deposition you
17 were a -- a representative or a designee of
18 your company, correct?

19 A. Correct.

09:40 20 Q. Are you familiar with the term
21 30(b)(6)?

22 A. I've heard it but I don't recall
23 exactly what it means.

24 Q. In any event, you're here to

Amy Finley, 4/21/2014

9

1 testify today about certain topics, correct?

2 A. Yes.

3 Q. Were you provided with a notice
4 that told you what those topics were?

5 A. Yes.

6 (Exhibit 208 identified.)

7 MR. HANKINSON: I'd like to mark
8 an exhibit as 208. Please take a moment to
9 look at Exhibit 208 and in particular topics
09:41 10 19 and 20 that start on page three.

11 A. Okay.

12 Q. Do you understand that
13 Defendant's Exhibit 208 which is titled
14 Defendant Context Media, Inc.'s Third
15 Supplemental Notice of Deposition of
16 Plaintiff Healthy Advice Networks, LLC
17 pursuant to Federal Rule of Civil Procedure
18 30(b)(6) is a notice that lists the topics
19 that you're here to testify today about?

09:41 20 A. Yes.

21 Q. Are you prepared to testify on
22 behalf of Patient Point formerly known as
23 Healthy Advice Networks as to the content of
24 these topics?

Amy Finley, 4/21/2014

10

1 A. Yes.

2 MR. BERNAY: Obviously we have
3 lodged objections to these, Tom, as you know
4 and Amy is not here to testify about topic 19
5 B and she'll be testifying subject to our
6 objections.

7 MR. HANKINSON: Did you review
8 the documents that have been produced by
9 Healthy Advice Networks on or after March
09:42 10 26th, 2014?

11 A. Yes.

12 Q. In addition to reviewing those
13 documents, how else, if at all, did you
14 prepare for your deposition today?

15 A. I did investigate with a few
16 people inside Healthy Advice/Patient Point.

17 Q. Who?

18 A. Linda Gustin, Nicki Cloran,
19 Emily Hines, Rob Slater, Vida Albert and
09:43 20 Heather McGauvran.

21 Q. Who is Linda, is it, Gozdin?

22 A. Gustin.

23 Q. Gustin. Could you spell her
24 last name?

Amy Finley, 4/21/2014

11

1 A. G-U-S-T-I-N. She works in the IT
2 department.

3 Q. What did you speak to Ms. Gustin
4 about?

5 A. Just making sure I understood
6 the -- the database pulls, what software is
7 used, and things like that can.

8 Q. You said database pulls
9 P-U-L-L-S?

09:44 10 A. Pulls. Yeah. Sorry.

11 Q. No. That's great. I just want
12 to make sure I understand. When you say
13 database, are you referring to a system that
14 Patient Point maintains called CMS?

15 A. Correct.

16 Q. Does that stand for customer
17 management system?

18 A. I believe so but I'm not 100
19 percent sure.

09:44 20 Q. In any event, CMS.

21 A. CMS is our database.

22 Q. Are there any other databases or
23 sources of information that you were
24 referring to?

Amy Finley, 4/21/2014

12

1 A. No.

2 Q. Who is Nicki Cloran?

3 A. Nicki is in our research
4 department.

5 Q. Could you spell her full name?

6 A. If I recall how to -- it's
7 N-I-C-K-I and then her last name C-L-O-R-A-N
8 I believe.

09:44 9 Q. What did you talk to Ms. Cloran
10 about?

11 A. In regards to a webinar that was
12 conducted.

13 Q. Are you referring to a
14 rheumatology webinar that had one attendant?

15 A. Yes.

16 Q. Who is Emily Hines?

17 A. Emily Hines works in our
18 creative department and just spoke to her in
19 regards to the same thing. The webinar.

09:45 20 Q. Is her last name H-E-I-N-Z?

21 A. H-I-N-E-S I believe.

22 Q. Ah. H-I-N-E-S. Who is Rob
23 Slater?

24 A. Rob Slater works in our field

Amy Finley, 4/21/2014

13

1 service digital department.

2 Q. What did you speak to Mr. Slater
3 about to prepare for your deposition today?

4 A. In regards to an e-mail that he
5 produced.

6 Q. Who is Ms. Vida Albert?

7 A. Vida is our -- she's also in
8 field service digital. Part of tracking
9 assets.

09:46 10 Q. Some of the assets that
11 Ms. Albert tracks are monitors that are used
12 in Patient Point's in waiting room network
13 systems and CPUs that are also used in those
14 systems, correct?

15 A. Correct.

16 Q. And that's V-I-D-A A-L-B-E-R-T?
17 And who is Heather McGauvran?

18 A. Heather McGauvran is the
19 director of the practice or relationship
09:46 20 managers.

21 Q. M-C big G-A --

22 A. U.

23 Q. -- U-V-R-A-N?

24 A. Correct.

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Amy Finley, 4/21/2014

14

1 Q. Thank you. What did you speak
2 to Ms. McGauvran about?

3 A. In regards to a matrix.

4 Q. Could you be more specific?

5 A. A matrix that Vida apparently
6 had produced.

7 Q. Does the matrix that you're
8 referring to list out serial numbers or
9 example serial numbers of various models of
10 monitors and CPUs?

11 A. I believe so.

12 Q. Was the purpose of Ms. Albert's
13 matrix that you spoke to Ms. McGauvran about
14 to have a list of which monitors and CPUs
15 were considered to still be in play in
16 Patient Point systems versus others that were
17 considered obsolete?

18 A. I believe that what I asked
19 Ms. McGauvran about was actually she'd
20 received -- recalled receiving that matrix
21 from Vida, which she had, and if she had
22 distributed it to the team which she didn't
23 recall doing.

24 Q. Didn't recall one way or the

Amy Finley, 4/21/2014

15

1 other or she --

2 A. Didn't recall if she'd sent --
3 sent it to the actual team, shared it with
4 the team, or she just kept it for her own
5 reference.

6 Q. Did Ms. McGauvran say I
7 definitely did not send it to the team or did
8 she say I don't remember one way or the
9 other?

09:48 10 A. I don't remember.

11 Q. Was that the only topic that you
12 spoke with Ms. McGauvran about?

13 A. And then I asked her if we had a
14 process regarding obsolete equipment.

15 Q. What did she say?

16 A. No.

17 Q. When you used the word we, were
18 you referring to the customer relationship
19 management team?

09:48 20 A. The relationship management
21 team. Yes.

22 Q. Are you the head of the
23 relationship management team?

24 A. I'm the VP of our provider

Amy Finley, 4/21/2014

16

1 services. Heather McGauvran reports to me.

2 Q. Were you at one point the head
3 of the customer rela -- or excuse me -- the
4 relationship management team?

5 A. The head point? Yes. And I
6 manage that team as well with Heather
7 McGauvran. For a while she was the assistant
8 manager but from like a day-to-day workflow
9 providing people work on the team, making
09:49 10 sure that, you know, time off, things like
11 that, Heather managed like the day-to-day
12 activities of the team.

13 Q. When did you become vice
14 president of provider services?

15 A. 2012 I believe.

16 Q. Prior to that were you solely in
17 charge of managing the relationship
18 management team?

19 A. No. I was the director and
09:49 20 again Heather McGauvran was still working
21 with me.

22 Q. And is relationship management
23 team how you commonly refer to your
24 department or group that manages the

Amy Finley, 4/21/2014

17

1 relationships with providers that are in
2 Patient Point's various networks?

3 A. Yes. They used to be called
4 practice relations so there may be
5 terminology somewhere along the way that says
6 practice relations.

7 MR. BERNAY: Just note these --
8 I believe these questions were asked and
9 answered the first time around.

09:50 10 Q. Practice relations and then
11 relationship --

12 A. Relationship management.

13 Q. -- management.

14 A. Relationship management team.
15 Their individuals are relationship managers.

16 Q. Did you speak to Ms. Albert
17 about anything other than the matrix?

18 A. I discussed with her her process
19 on what she recalled as far as obsolete
09:51 20 equipment.

21 Q. How long was your conversation
22 with Ms. Albert?

23 A. Maybe five, 10 minutes.

24 Q. Do you have -- did that occur

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Amy Finley, 4/21/2014

18

1 before or after Ms. Albert was deposed in
2 this matter?

3 A. I believe it was after.

4 Q. And did you ask her if there was
5 anything that needed to be corrected or
6 changed in any way after her deposition?

7 A. No, I did not.

8 Q. Did she indicate to you that
9 there was any information that she was
09:51 10 providing you that was different in any way
11 from her answers to the questions of the
12 prior deposition?

13 A. No.

14 Q. Do you think that she would have
15 told you if there was something that she said
16 at that deposition that related to the matrix
17 and the process regarding obsolete equipment
18 that was in any way inaccurate?

19 A. Repeat that again. Make sure I
09:51 20 understand that right.

21 Q. Sure. Do you believe based on
22 your conversation with her --

23 A. Uh-huh.

24 Q. -- in preparation for your

Amy Finley, 4/21/2014

19

1 deposition today that if there was anything
2 that she believed was inaccurate about the
3 answers that she gave in her deposition she
4 would have told you about them during your
5 conversation so that you could correct them?

6 A. I don't know if she would have
7 told me that or not, knowing whether or not
8 that would be something she should do, so we
9 didn't go into that discussion.

09:52 10 Q. In what way then did you talk
11 about her process regarding obsolete
12 equipment and the matrix?

13 A. So asked her if she recalls who
14 she sent the matrix to. She had said
15 Heather, and she also said that a few people
16 on my team she knows that she sent directly
17 to. My team meaning the relationship
18 management team. And then we discussed as
19 far as I reconfirmed with her in the fact
09:52 20 that she is not calling and canceling or
21 removing or scheduling removals of equipment,
22 that her process and what she handles is when
23 we actually have situations where the
24 equipment goes missing. It's somewhat

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Amy Finley, 4/21/2014

20

1 un-retrievable. They're having an issue
2 finding it at the practice. Things like
3 that. That that's when she gets involved and
4 would call the practice directly. I was
5 trying to understand when she would actually
6 be speaking with the practices versus the
7 relationship managers who are the ones that
8 typically schedule the removals.

09:53 9 Q. And the situation you just
10 described --

11 A. Uh-huh.

12 Q. -- is the situation in which
13 Ms. Albert would be speaking directly with
14 representatives of provider's offices.

15 A. In situations like that she
16 could be, yes.

17 Q. In all other situations it would
18 be expected that a member of the relationship
19 management team would be the person from
09:53 20 Patient Point to have direct contact with
21 provider's offices, right?

22 A. Correct. Vida was only called
23 in when there was a, you know, a need if --
24 that situation when equipment was missing.

Amy Finley, 4/21/2014

21

1 Q. When the practice relationship
2 managers were handling the communications
3 with the practices directly, they would still
4 nevertheless consult with Ms. Albert about
5 equipment that Ms. Albert was charged with
6 tracking, correct?

7 A. They would consult with
8 Ms. Albert, yes.

09:54

9 Q. Did you speak with Mr. Slater
10 about anything other than the e-mail that was
11 produced on or after March 26th in this case?

12 A. No.

13 Q. Did you speak with Ms. Hines or
14 Ms. Cloran about anything other than the
15 rheumatology webinar that we mentioned
16 earlier?

17 A. No.

09:55

18 Q. Did you speak with Ms. Gustin
19 about anything other than your understanding
20 of CMS and the pulls from that database?

21 A. No.

22 Q. Is Ms. Gustin the person at
23 Patient Point who has primary responsibility
24 for getting reports from CMS for special

Amy Finley, 4/21/2014

22

1 projects or reports that aren't standardized?

2 A. I don't know if she's the
3 primary person. There's a multiple people in
4 the IT department. Sorry. I didn't realize.
5 She -- I know she is one of the people that
6 is used to pull special reports.

7 Q. Have you worked with her before
8 to get special reports --

9 A. Yes.

09:55 10 Q. -- from CMS?

11 A. I have.

12 Q. Is she the person that you work
13 with most when you need a special report from
14 CMS?

15 A. Yes.

16 Q. Do you work with anyone else in
17 IT when you need a special report from CMS?

18 A. Sometimes I work with John
19 Hummel.

09:55 20 Q. But the vast majority of times
21 you work with Ms. Gustin?

22 A. I work with Ms. Gustin, yes.

23 MR. HANKINSON: I'd like to mark
24 an exhibit as Defendant's 209.

Amy Finley, 4/21/2014

23

1 (Exhibit 209 identified.)

2 Q. Ms. Finley, please take a moment
3 and read over what's been marked as
4 Defendant's Exhibit 209 and let me know when
5 you've familiarized yourself with it.

6 A. Okay.

7 Q. What is Defendant's Exhibit 209?

8 A. This is the cancel process for
9 the relationship management team.

09:57 10 Q. Who wrote this document?

11 A. I believe this one was written
12 by Heather McGauvran. I -- I initiated this
13 process originally. I believe she had
14 updated it for this particular -- since then.
15 I was the original person like I said before.
16 She is -- she was my -- part of her being an
17 assistant manager was kind of keeping our
18 processes updated.

09:58 19 Q. About how often was the WRN
20 cancel process updated during your time at
21 Patient Point?

22 A. Not very often. Not a lot's
23 changed with this process.

24 Q. Are you aware of any updates

Amy Finley, 4/21/2014

24

1 besides the one that is marked as Defendant's
2 209?

3 A. Not that I'm aware of. No.

4 Q. Did you ever request that
5 someone update the WRN cancel process or did
6 you ever personally update it other than the
7 time that you initiated it and the time that
8 you asked Ms. McGauvran to update it?

9 MR. BERNAY: Object to the form.

09:58 10 You can answer.

11 A. Considering that I don't really
12 recall the timeframes, I would think that at
13 some point this was updated in some way
14 dependent upon orders that we use within the
15 database but for the most part this has
16 always been our process so --

17 Q. Sometimes the workflow of the
18 way that orders in CMS are processed changes.
19 Is that what you're saying?

09:59 20 A. It could. Yes.

21 Q. And when that happens you would
22 expect that the WRN cancel process document
23 would be updated to reflect the different
24 ways that CMS is being used?

Amy Finley, 4/21/2014

25

1 A. Correct. But looking at the
2 orders that are actually in this process,
3 they're the same orders that we use today and
4 I don't recall these changing at all.

5 Q. Do you believe this one to be
6 the most up-to-date version?

7 A. Yes.

8 Q. Do you know about when this
9 version was prepared?

09:59 10 A. Actually, I can't say that
11 honestly knowing that I don't know -- recall
12 which version. I believe this was in --

13 MR. BERNAY: Take your time to
14 look at the document if you need to.

15 THE WITNESS: Okay. Again, I
16 think this was 2010, 2011 was when our
17 process was written. Looking through here, I
18 don't believe that anything has changed from
19 this process looking at the reason codes.

10:00 20 Q. Is your answer complete?

21 A. Yes. I think that this is still
22 our current process.

23 Q. Your best understanding is that
24 this process was created in 2010 or 2011 and

Amy Finley, 4/21/2014

26

1 that not much, if anything, has changed since
2 then?

3 A. Correct.

4 Q. And it is reflected in
5 Defendant's Exhibit 209?

6 A. Yes.

7 Q. When you referred to reason
8 codes, was that in reference to subparagraph
9 four and the bullets that are under it on the
10:01 10 page that's marked HAN 005789?

11 A. Correct. Under four, cancel
12 reasons, there's the list of reason codes
13 that we use.

14 Q. What are those?

15 A. Those are reason codes that we
16 use to track the cancels for each location in
17 our database.

18 Q. Each location has a unique
19 identification number, right?

10:02 20 A. Correct.

21 Q. When a location informs Patient
22 Point that it would like to cancel Patient
23 Point service, a reason code is selected, is
24 that correct?

Amy Finley, 4/21/2014

27

1 A. Yes. When we officially cancel
2 the -- the stage of the location in the
3 database it was canceled with a reason.

4 Q. When you say the stage, is that
5 the network that's at the provider?

6 A. The stage of the location. So
7 if I have a location that has the waiting
8 room screen, they're active today because
9 it's up and running. Once it's been removed
10:02 10 it is then canceled.

11 Q. Stage refers to the field in CMS
12 that says whether a practice is active or
13 canceled?

14 A. Correct.

15 Q. Is it possible to update the
16 stage of a location to cancel without putting
17 in a reason?

18 A. It was at one time.

19 Q. And when did that become
10:03 20 impossible?

21 A. I don't recall the date. I
22 would say at least -- it's been that way at
23 least since 2011.

24 Q. The whole year?

Amy Finley, 4/21/2014

28

1 A. I believe so. Yes.

2 Q. So at some point in 2010 or
3 before, the system was changed in some way so
4 that when a location was updated to canceled
5 in the stage field it was mandatory to enter
6 a reason. Did I say that right?

7 A. Yes. Before the field was
8 available but then we made it a required
9 field because again it's a manual entry so we
10:04 10 wanted to make sure people remembered to put
11 it in.

12 Q. Prior to the update in which the
13 reason code was made a mandatory entry for
14 all cancellations, was it already the policy
15 that a reason should be entered in every
16 situation where a practice canceled it?

17 A. It should be, yes.

18 Q. Do you have any impression of
19 how often a reason code was entered versus
10:04 20 not entered prior to that time?

21 A. No, I don't.

22 Q. Did a training at the time
23 include instructions to relationship managers
24 about how to get a reason for the

Amy Finley, 4/21/2014

29

1 cancellation and how to enter it as a reason
2 code?

3 A. So I am actually the one that
4 enters the reason co -- the official final
5 reason at that time in 2011 and 2012 so it
6 could have been my error that I did not enter
7 a reason code prior to -- prior to 2011 when
8 it was a manual.

9 Q. I just don't understand.

10:05 10 A. Okay. We have a stage or
11 basically I -- the cancel order. The
12 relationship manager creates a cancel
13 order --

14 Q. Uh-huh.

15 A. -- the cancel order then gets
16 reassigned to me when it's officially being
17 cancelled. Then I officially take that stage
18 and move it from active to cancel and then
19 actually from there an ans -- enter the
10:05 20 reason code based on the comments.

21 Q. Has that been the workflow for
22 cancel orders and reason codes since the time
23 that you started working at Patient Point?

24 A. Not since the time I started

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Amy Finley, 4/21/2014

30

1 working at Patient Point because I haven't
2 done lots of different things at Patient
3 Point. So when I took over the position of
4 working -- overseeing the relationship
5 management team, yes.

6 Q. And that was prior to 2010?

7 A. That was around 2009.

8 Q. The whole time that you were in
9 your -- that position forward, the workflow
10:06 10 that you just described for cancels and
11 reason codes is what has been followed up to
12 today?

13 A. That is -- yes, that is the
14 process now. Not to say that I haven't had
15 somebody here and there help me out and do
16 some for me but majority of the time it was
17 my responsibility to change them from active
18 to canceled.

19 Q. So when you changed the -- the
10:07 20 CMS system to make it mandatory, you were
21 essentially helping yourself remember?

22 A. Correct.

23 Q. Do you have a sense of how often
24 you were forgetting prior to that?

Amy Finley, 4/21/2014

31

1 A. No, I don't.

2 Q. What was the source of your
3 information in entering reason codes?

4 A. The comments.

5 Q. What are the comments?

6 A. The comments entered into the
7 database.

8 Q. Who entered the comments on
9 which you based the reason codes that you
10 selected?

10:07

11 A. The relationship management
12 team.

13 Q. I'm sorry for being so basic.
14 Just trying to --

15 A. Okay.

16 Q. -- work through it. Did anyone
17 else enter comments about the reasons that
18 practices canceled that you relied on in
19 entering reason codes?

10:08

20 A. I don't believe so. I typically
21 always looked at the relationship management
22 comments because they're the people that are
23 responsible for understanding why they
24 canceled.

Amy Finley, 4/21/2014

32

1 Q. Those comments reflected the
2 company's best information about why a
3 particular practice canceled Patient Point's
4 service, right?

5 A. Correct.

6 Q. Did you sometimes personally
7 interview the practice representative about
8 the reasons for the cancel?

9 A. I may have.

10:08 10 Q. You don't recall?

11 A. I don't recall.

12 Q. Do you recall ever doing that?

13 A. I don't recall. I mean, I'm not
14 going to guess --

15 Q. Uh-huh.

16 A. -- so --

17 Q. If --

18 A. I would like to think that if
19 there was one I was confused on that I would
10:08 20 ask the questions. Yes.

21 Q. If a CMS entry is notated to
22 have been created by you --

23 A. Uh-huh.

24 Q. -- and it includes a reason that

Amy Finley, 4/21/2014

33

1 the practice decided to cancel, would that be
2 a comment that you used, written by yourself,
3 to pick the reason code?

4 A. Yes.

5 Q. Do you ever consider other
6 sources of information besides the CMS
7 comments when you're picking a reason code?

8 A. No.

10:09

9 Q. You never reach out to a member
10 of the team for further explanation or ask
11 them to call back?

12 A. I may have. Again, like I said
13 before, if there was something I was confused
14 about but then again if they called back or
15 that was a situation they would have entered
16 a comment into the database that they called
17 back the location.

10:10

18 Q. Just to make sure I understand,
19 if you were confused in any way by a CMS
20 entry about the reason that a practice left
21 Patient Point's system, you would potentially
22 ask the relationship manager about that
23 reason and if they called and got more
24 information from the practice, that in itself

Amy Finley, 4/21/2014

34

1 would become a new CMS entry that you then
2 would rely on to pick a reason code?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. That sounds about right. Yes.

6 Q. What part of it is wrong?

7 A. Well, I just don't -- I guess
8 I'm just not following. I don't really

9 understand what this means. I mean, what --

10:10 10 you know, I'm -- I'm -- basically I'm reading
11 the comments. I'm selecting a reason code.

12 For the most part they're pretty

13 straightforward. If -- I would think just

14 being a good manager that if for some reason

15 I was confused on something I would ask the

16 team or ask the person that originally spoke

17 with them more questions about it. If they

18 pointed out to me -- to be clear, I guess

19 that would mean that I might not have got it

10:11 20 from a comment. Maybe they did clarify. I

21 just don't really recall many of those

22 situations which is why I'm having a hard

23 time with all of this --

24 Q. Uh-huh.

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Amy Finley, 4/21/2014

35

1 A. -- so, you know, that's what I
2 would believe that I would do. Makes sense.
3 But, you know, again not having a lot of
4 recollection of doing that and I haven't been
5 doing it at all this year. I've since passed
6 that baton on to someone else. So, you know,
7 again it's just not something on the
8 forefront.

10:11

9 Q. This year in 2014 at some point
10 someone else took that over?

11 A. Correct.

12 Q. I hear what you're saying. To
13 maybe go about this in a different way, do
14 the relationship managers receive training in
15 how to get information from the practice
16 representatives about the reason that they're
17 canceling?

10:12

18 A. They are told to ask why they're
19 canceling and to try to probe to understand
20 why and to document that into the comment.

21 Q. And the intention is that
22 they'll do that so that the best information
23 the company has is in the field in CMS for
24 you to review?

Amy Finley, 4/21/2014

36

1 A. That is what we would like them
2 to do. Yes.

3 Q. So when you said earlier that
4 it's -- I forget if you said simple or
5 straightforward. The process works is
6 essentially what you're saying.

7 A. Correct. Which is the reason
8 why we haven't really updated this process.

10:12

9 Q. Patient Point takes the
10 information that's entered as a reason code
11 and uses it to make business decisions,
12 right?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 A. Uses it to make business
16 decisions. They use it for -- to review
17 reports to understand why practices are
18 leaving.

10:13

19 Q. And presumably they do that for
20 a reason.

21 A. Yes.

22 Q. And so once they understand why
23 they think practices are leaving based on the
24 reason codes they use that information in

Amy Finley, 4/21/2014

37

1 some way in Patient Point's business, right?

2 A. I would believe they use it, you
3 know, strategies and ideas on how to improve
4 the business.

5 Q. That's the purpose of --

6 A. That's the purpose.

7 Q. -- entering reason codes, right?

8 A. Right. So we can better
9 understand.

10:13 10 Q. I know some of my questions are
11 basic.

12 A. I'm sorry. I don't mean to --

13 Q. Looking back to Defendant's
14 Exhibit 209, is it the policy of Patient
15 Point that this WRN cancel process should be
16 used by the relationship managers and you or
17 the person who's appointed regarding reason
18 codes whenever a practice cancels a waiting
19 room network subscription?

10:14 20 A. Yes.

21 Q. Have you ever had to discipline
22 anyone for not following this practice?

23 A. No.

24 Q. It's been routinely and

Amy Finley, 4/21/2014

38

1 universally followed to your knowledge as
2 their --

3 A. To my knowledge.

4 Q. -- manager?

5 A. Yes.

6 Q. I'd like to refer you to the
7 last major pointed bullet that start -- on
8 the first page of Defendant's Exhibit 209
9 where it says if RM is unable to save. Is RM
10:15 10 relationship manager?

11 A. Yes.

12 Q. The last check box under that --
13 excuse me. So if the relationship manager is
14 unable to, you know, save, does that mean
15 keep the practice from canceling?

16 A. Yes.

17 Q. So if the relationship manager
18 can't keep the practice from canceling, there
19 are steps under this bullet that the
10:15 20 relationship manager is supposed to follow,
21 correct?

22 A. Correct.

23 Q. The first step is to schedule
24 the removal of equipment, right?

Amy Finley, 4/21/2014

39

1 A. Correct.

2 Q. The next two bullets have to do
3 with the removal of equipment and shipping it
4 back to Patient Point, right?

5 A. Correct.

6 Q. Then the fourth check box says
7 you must obtain a reason for canceling and
8 must is in all capital letters in bold type,
9 correct?

10:16 10 A. Correct.

11 Q. Did you put that boldface type
12 in when you drafted this originally?

13 A. I don't remember if it was me
14 or -- but, you know, it was there obviously
15 to call attention to it.

16 Q. That was the purpose of putting
17 must in all caps.

18 A. Right.

19 Q. The first sub-bullet under that
10:16 20 says, it is very important we capture the
21 true reason behind the cancel. Did I read
22 that correctly?

23 A. Yes.

24 Q. Why is that very important?

Amy Finley, 4/21/2014

40

1 A. Because sometimes when a
2 practice will call in they'll just say
3 there's -- they're canceling because the
4 doctor decided he wanted to do something else
5 or he no longer wanted it for what -- it was
6 the doctor's decision and it's typically the
7 easy way for the office manager to just tell
8 us because, you know, they don't want to
9 really -- it's hard enough to say, oh, I'm
10:17 10 canceling your program. So it's easier to
11 say, well, the -- it was the doctor's
12 decision so they don't have to actually tell
13 us anything. So we try to ask more questions
14 or say could we speak to the doctor as really
15 the point behind that. Not just settling for
16 I don't know, he just decided he no longer
17 wants it. So it's try to find the real
18 reason why they no longer want it.

19 Q. The importance of that point and
10:17 20 the way to go about pressing the office
21 manager --

22 A. Uh-huh.

23 Q. -- in getting the true reason,
24 is all of that conveyed to the relationship

Amy Finley, 4/21/2014

41

1 manager in their training and meetings?

2 A. It's -- well, it's kind of right
3 here actually in this document.

4 Q. It's spelled out here and you
5 would expect them to know it?

6 A. You would expect them to know.
7 They should read through this prior to
8 handling a cancel.

9 Q. I see. It says here, probe to
10:17 10 get an answer; don't just accept that they
11 just don't want it, why don't they want it,
12 no sound, using something else. That's the
13 second sub-bullet, right?

14 A. Right.

15 Q. No sound is an example of a
16 reason that some practices give for wanting
17 to cancel, correct?

18 A. Correct.

19 Q. Does that refer to the absence
10:18 20 or almost absence of sound in Patient Point's
21 content loops that get played on the screens
22 in doctor's offices?

23 A. Correct.

24 Q. Using something else, what does

Amy Finley, 4/21/2014

42

1 that mean?

2 A. Where are you at?

3 Q. The second sub-bullet under the
4 last check box.

5 A. Oh. If they're using another
6 program, television, their own materials or
7 own programming.

8 Q. The next sub-bullet says, ask
9 what they plan to use for patient education
10 in the future. Is that a question that the
11 relationship managers are expected to ask, if
12 they can, in every instance?

13 A. If they can, yes. You know, I
14 don't expect them to every time. You don't
15 want to press the customer if you don't
16 have -- you know, if they're -- if they seem
17 like they're -- it's all about reading the
18 customer really, so if they don't feel that
19 this is something they're gonna get out of
20 them, you know, they're not gonna ask the
21 question. I wouldn't expect them to.

22 Q. Uh-huh. That one's a little bit
23 tougher. You're really pressing them for --

24 A. Right.

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Amy Finley, 4/21/2014

43

1 Q. -- a commitment about their
2 future --

3 A. Right.

4 Q. -- action.

5 A. Correct.

6 Q. The next sub-bullet says, if you
7 are switching to TV ask why. Will they let
8 the patients watch whatever they want.

9 Again, that's something that if the

10:19 10 relationship manager can you expect them to
11 ask it.

12 A. Correct. All of these that are
13 listed here are basically if you can. It's
14 to give them suggestions, ideas on things
15 that they could ask to help find the reason.

16 Q. In a sense coming under the very
17 first sub-bullet that it's important to find
18 the true reason.

19 A. Right. It probably isn't
10:20 20 outlined correctly. Should probably be
21 another sub-bullet underneath there.

22 Q. I'm not criticizing.

23 A. That's okay.

24 Q. The next sub-bullet is sort of a

Amy Finley, 4/21/2014

44

1 point of emphasis. Asking questions is the
2 only way we can improve our programs by truly
3 understanding why practices leave us.

4 A. Correct.

5 Q. Do you think that's a true
6 statement?

7 A. Yes.

8 Q. And it's included here to
9 motivate the relationship managers to help
10:20 10 the company by finding the true reason,
11 right?

12 A. Yes.

13 Q. Do you find that your
14 relationship managers are motivated to help
15 the company?

16 A. Yes.

17 Q. Switching to a competitor. This
18 is the next sub-bullet. Get the name of the
19 company, list the name in comments and note
10:21 20 field and update competitor info on the
21 general node. What is it about their program
22 they like over ours? Generally does that
23 describe questions to ask when the practice
24 lets the relationship manager know that a

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Amy Finley, 4/21/2014

45

1 competitor patient education system is being
2 installed?

3 A. Correct.

4 Q. What's the general node?

5 A. It's just a field or a place
6 where information is stored in the database.

7 Q. Is it just competitor info or --

8 A. No. Their address information
9 is there as well. Phone number. Fax.

10:21 10 Things like that. General information.

11 Q. Does each location ID number
12 only have one general node?

13 A. Yes.

14 Q. And it's written over or updated
15 rather than being stored as a series of
16 different entries?

17 MR. BERNAY: Object to the form.
18 You can answer.

19 A. It's just -- it's basically
10:22 20 fields so, yes, they can be updated. Address
21 information could be updated if they move or
22 fax. So things like that. Yes.

23 Q. When you say update competitor
24 info on the general node, what information

Amy Finley, 4/21/2014

46

1 about the competitor is updated there?

2 A. It's just the name of the
3 competitor -- competitor at the office.

4 Q. Any other information would be
5 in a normal --

6 A. Comment.

7 Q. -- CMS field?

8 A. It would -- any -- like this
9 information what they liked about theirs over
10 ours would be in the comment. All of the --
11 the only thing on the general node, that
12 field, is just the field name of the
13 competitor name.

14 Q. Then the final sub-bullet on
15 this page, the first page of Defendant's
16 Exhibit 209, says, their feedback is
17 important so we can continue to improve our
18 programs. Again, is that for emphasis and to
19 motivate the employees?

20 A. Correct.

21 Q. Once the relationship manager
22 obtains all the information that he or she
23 can about the reason for canceling pursuant
24 this check box and the sub-bullet

Amy Finley, 4/21/2014

47

1 instructions here, are they instructed to
2 enter all of that information into CMS
3 comment fields?

4 A. Yes. They're supposed to enter
5 a comment summary of what took place so I
6 spoke to the practice, this is what I -- this
7 is what happened, this is what they told me,
8 and again it may be very vague in the sense
9 that they were not able to obtain all the,
10:23 10 you know, information to all of these. It
11 comes back to reading the customer, probing
12 when you can without making them mad or upset
13 because you would like to think that these
14 customers could potentially be a customer
15 again in the future.

16 Q. Patient Point's instructions are
17 to enter into a CMS comment field all the
18 information that the relationship manager was
19 able to obtain, correct?

10:24 20 A. Correct.

21 Q. And the instructions are to get
22 the best information possible under the
23 circumstances and understanding that practice
24 representatives are busy and might be annoyed

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Amy Finley, 4/21/2014

48

1 by the call but wanting to press and find the
2 true reason as much as possible, right?

3 A. As much as possible, yes.

4 Q. If you could look at the next
5 page of Defendant's Exhibit 209, the first
6 pointy bullet -- is that an arrow? Should I
7 be calling that an arrow?

8 A. Uh-huh.

10:24

9 Q. The first arrow says, after all
10 cancel information is obtain proceed as
11 follows. Are you with me?

12 A. Yes.

13 Q. The first subparagraph says RM
14 will create WR-cancel-request order and
15 reassign to Amy Finley. Does that reflect
16 the workflow as it has been since you were
17 managing practice relations?

18 A. Yes.

10:25

19 Q. And it's what we discussed
20 earlier.

21 A. Yes.

22 Q. There's a sub-point here, a
23 little box bullet that says in italics, due
24 to competitor, question mark, add in the name

Amy Finley, 4/21/2014

49

1 in the notes field. Is that just a reminder
2 of some of the instructions from the prior
3 page?

4 A. Yes. To help me understand when
5 I put the competitor name with the cancel
6 reason code.

7 Q. So in addition to the
8 relationship manager updating the general
9 node with the competitor name, you also if
10:26 10 you put competitor as one of the reasons
11 enter the competitor name in association with
12 the cancel code or the reason code?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 A. The competitor name on the stage
16 nodes I don't believe is always updated
17 because it's a different place you have to go
18 in the database. To remember to have to do
19 that was a little bit more difficult than to
10:26 20 put it in with the cancel order --

21 Q. Uh-huh.

22 A. -- that you're working where
23 your comments are. So again from my
24 standpoint for -- for it to be easier for me

Amy Finley, 4/21/2014

50

1 to try to understand who the competitor was
2 if they put it in this area I can locate it.
3 It's -- they're more likely to remember it.
4 Again, not always did they do that. I would
5 have to kind of read through the comments to
6 understand.

7 Q. When you say stage nodes, is
8 that another word for general node?

9 A. Yes.

10:27 10 Q. Ideally, according to the WRN
11 cancel process, a relationship manager would
12 enter the name of the competitor in the
13 general node and would also add it in the
14 comments field and you would get it from both
15 those sources when you're picking a reason
16 code?

17 A. I would get it from the
18 comments. I didn't go to the general node.

10:27 19 Q. When a -- stutter. When a
20 practice gives as its reason that it is
21 switching to a competitor and also gives
22 information about why it is switching to a
23 competitor and the reason why is covered by a
24 different reason code, how do you pick one?

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Amy Finley, 4/21/2014

51

1 MR. BERNAY: Object to the form.
2 You can answer if you understand the
3 question.

4 A. I'm not really sure I understand
5 the question.

6 Q. I'll march through the document
7 and then maybe I'll be able to ask it better.
8 Sorry for trying to speed up.

9 A. Well -- no. I think that what
10:28 10 you're trying to say -- you can correct me --
11 is that sometimes a location may be moving
12 and they're also switching to a competitor,
13 so how do I determine if moving should be the
14 reason or competitor should be the reason.

15 Q. Uh-huh.

16 A. So the way that I look at it,
17 the practice relationship manager will
18 express both in the comment but I look at
19 that as, well, they moved but the real reason
10:29 20 why they're not going to reinstall us is
21 because of the competitor. So if it's like
22 that, if I can really find out the real
23 reason on top of the move, then I'll put
24 that, but if I can't and it just comes down

Amy Finley, 4/21/2014

52

1 to, well, they're moving and they really
2 won't tell us any more as to why they're
3 switching then I end up with moving.

4 Q. Uh-huh.

5 A. So it's -- you know, they could
6 be moving and they decide they don't want
7 advertising in their office or they're
8 remodeling and they no longer want any
9 advertising. So I know that they don't want
10:29 10 advertising so I would put advertising versus
11 remodeling because I know the real reason why
12 they're canceling.

13 Q. Because logically there's
14 nothing to keep them from reinstalling in the
15 new location or --

16 A. Correct.

17 Q. -- after the remodel.

18 A. Correct. And if there was then
19 that's when it would go to for cause which is
10:29 20 how we would label those because that -- if
21 there's something with the building or
22 whatnot that won't allow them to reinstall
23 the equipment then we would put that reason.

24 Q. That's interesting. So when

Amy Finley, 4/21/2014

53

1 it's moving, renovation, remodeling -- I'm
2 sorry. When it's moving or remodeling,
3 it's -- you're in essence saying that there's
4 probably a different reason and it's either
5 for cause if you can figure out that the move
6 or the remodel really does prevent it or
7 they're not telling you what the real reason
8 is.

9 MR. BERNAY: Object to the form.

10:30 10 You can answer.

11 A. For moving -- so moving decor,
12 for example, is typically because when they
13 move a lot of times they don't want to put
14 anything new or put anything on the walls
15 that are new. Like buying a new house.
16 Don't want to hang that first picture so --

17 Q. So that's a real reason.

18 A. So it's really a real reason but
19 sometimes it's just we're moving and -- and
10:31 20 we have a new office and it really just
21 doesn't go with the aesthetics and so it can
22 really be the true reason. But it's we're
23 moving but we're also gonna reinstall this
24 other program or we're just gonna go with a

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Amy Finley, 4/21/2014

54

1 television which would be a competitor --

2 Q. Then --

3 A. -- so --

4 Q. -- it'll be coded to competitor.

5 A. It would be coded to competitor
6 with the reas -- with the competitor name of
7 television.

8 Q. And just to be clear. We're
9 discussing the reason codes, some of them
10:31 10 that are listed as sub-bullets on the second
11 page of Defendant's Exhibit 209 under the
12 first arrow paragraph four, subparagraph A,
13 all the way down in the little box
14 sub-bullets, right?

15 A. Yes.

16 Q. When you know it's a competitor
17 and you also get information about content or
18 advertising being related to the reason for
19 the switch, how do you deal with that
10:32 20 situation?

21 A. If it was content and
22 advertising? Is that what you said?

23 Q. Maybe I should take them one at
24 a time?

Amy Finley, 4/21/2014

55

1 A. Can you repeat the question?

2 Q. Sure. If you receive from the
3 practice information that they are canceling
4 because they're going with a competitor --

5 A. Uh-huh.

6 Q. -- and you also receive from
7 that same practice information that they
8 don't like Patient Point's content --

9 A. It would go to competitor.

10:32 10 Q. What about -- does it ever
11 happen when it's a competitor but the office
12 also says that it's opposed to advertising?

13 A. Not necessarily because all of
14 our competitors have advertising as well.

15 Q. Although sometimes practices
16 have their own patient education system,
17 right?

18 A. Right. So that's where --

19 Q. So that could happen.

10:33 20 A. That could happen but we would
21 still choose the competitor as -- and
22 programming if -- if they're new because
23 that's one of the codes under competitor.

24 Q. Programming?

Amy Finley, 4/21/2014

56

1 A. Own programming.

2 Q. Oh.

3 A. If they make their own
4 programming internally.

5 Q. That would be in place of the
6 competitor name?

7 A. Correct.

8 Q. When you select competitor as
9 the reason code, is it mandatory to put in a
10:33 10 name?

11 A. It is now.

12 Q. As of what time?

13 A. I believe it was -- I -- I
14 believe it was at the beginning of 2011 --
15 2010-2011 when I had them switch to where it
16 was a mandatory field to where it would stop
17 me to enter a name.

18 Q. The WRN cancel process document
19 on the second page appears to be set up for
10:34 20 the relationship manager to enter the reason
21 code but the practice and policy is for them
22 to provide that information to you in the
23 comments field and then for you to enter the
24 reason code?

Amy Finley, 4/21/2014

57

1 A. Correct.

2 Q. Do you ever have conversations
3 with the practice -- let me start again. Do
4 you ever have conversations with the
5 relationship manager when you find multiple
6 reasons in a comment field and you're trying
7 to prioritize which one should be cancel
8 reason number one?

9 A. I typically can make that
10:35 10 decision myself if there's two. Just kind
11 of -- like I said before, if it's -- usually
12 when there's two it's usually moving and
13 remodeling and something else. They may, as
14 you just pointed out before, make a comment
15 about our content but also state that they're
16 going to a competitor, so I know that I'm
17 gonna put competitor in there versus content.
18 So at the end of the day I'm making that
19 decision.

10:35 20 Q. Is there also a cancel reason
21 two?

22 A. They have a spot -- at one point
23 they had a spot where they could actually put
24 this -- put both of these on here in the

Amy Finley, 4/21/2014

58

1 database. This isn't where the official
2 cancel code goes. So it was somebody that
3 was at Patient Point prior to me started
4 that. I don't really use it. It is in here,
5 listed in here, but this isn't something
6 that's generally used or really required. I
7 don't pay attention to it.

8 Again, I look at their comments
9 because I get more out of that than anything
10:36 10 because again if they're putting multiple
11 reasons I really want to understand why or
12 what they are. So essentially you're
13 pointing out that I really need to update
14 this process.

15 Q. That's not my intent. So let me
16 make sure I understand.

17 A. Uh-huh.

18 Q. Under -- on the second page of
19 Defendant's Exhibit 209 under the first
10:37 20 arrow, subparagraph four, sub-subparagraph A,
21 cancel reason, there's a bullet that says
22 please list the final reason for the cancel
23 in the cancel reason one drop down box as the
24 reason may change as you learn more original

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59

1 reason can go under cancel reason two. Below
2 is the list of reason codes available. Well,
3 first, did I read that correctly?

4 A. You read that correctly.

5 Q. And do I understand you
6 correctly that since you started being in
7 charge of this process in 2009 you have
8 entered one cancel reason as the reason code
9 and not put in a cancel reason two?

10:38 10 A. Correct. I haven't -- for the
11 official -- again, this field is still there.
12 This is still available within the database.
13 People can enter information in there. It's
14 not to say that they can't. But myself when
15 I officially cancel the site from a program I
16 put in they can -- switch the stage from
17 active to canceled with the reason and if the
18 reason is competitor then the name of the
19 competitor.

10:38 20 Q. And if I understand you
21 correctly, the -- the reason given in this
22 sub-bullet doesn't apply because you wait
23 until the cancel is final and all the
24 information that's available is in the

Amy Finley, 4/21/2014

60

1 comment field before you pick a reason one so
2 there's no reason to have a reason two. Did
3 I --

4 MR. BERNAY: Object to the --

5 Q. -- understand you correctly?

6 A. I wouldn't --

7 MR. BERNAY: Object to the form.
8 You can answer.

9 A. I wouldn't really necessarily
10 say that. Again, I -- basically they enter
11 in a comment giving the information as to why
12 they canceled. I review that comment and I
13 put in they moved from -- that they moved
14 from active to cancelled with the reason.
15 They may have more than one reason and they
16 may have put them in here under this field as
17 cancel reason one, cancel reason two
18 originally when they -- because that was the
19 way that it was set up before I started it
20 that way, I was finding that that cancel one,
21 cancel two was not necessarily the real
22 reason. Like I said, I want to be the final
23 decision maker on which one should be over
24 top the other so therefore I would just

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61

1 review the comments to determine the actual
2 reason code.

3 Q. And you can put your final
4 decision in cancel reason one.

5 A. No. I would actually -- that --
6 again, that's what I mean. This is a part of
7 the database that's like not really utilized.
8 That -- I put that under the stage code. So
9 I change the stage code. Underneath the
10:40 10 stage code you change it to cancelled. When
11 you do that then the field popul -- or opens
12 up for me to allow me to answer the or enter
13 the reason why they cancelled. Then if it's
14 a competitor then another field opens up that
15 allows me to enter the name of the competitor
16 which isn't on here because that's my process
17 and I don't really have my process
18 documented.

19 Q. Are you aware of relationship
10:40 20 managers putting in information under the
21 fields that are shown as a little picture on
22 HAN 005789 that are labeled cancel reason one
23 and cancel reason two?

24 A. I'm sure that they have.

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62

1 Q. And that's probably changed over
2 time?

3 A. Yes.

4 Q. Would that vary by the
5 individual relationship manager?

6 A. Most likely.

7 MR. HANKINSON: I feel like
8 you've been --

9 MR. BERNAY: Yeah. I've been
10:41 10 trying to get a break in here. We've been
11 going about an hour so let's take a break.

12 THE WITNESS: I would rather
13 finish this, this document.

14 MR. BERNAY: I just -- I need --
15 I need to --

16 THE WITNESS: Okay.

17 VIDEOGRAPHER: We're off the
18 record.

19 (Break taken.)

10:47 20 VIDEOGRAPHER: We're on the
21 record.

22 MR. HANKINSON: Have you ever
23 seen a report of the data that is in CMS for
24 the cancel reason one and cancel reason two

Amy Finley, 4/21/2014

63

1 that are shown in the little picture on HAN
2 005789?

3 MR. BERNAY: Object to the form.
4 You can answer.

5 A. No, I don't recall seeing a
6 report --

7 Q. Is there --

8 A. -- on those two reasons.

10:48

9 Q. If you asked Ms. Gustin to
10 create a report, could she do that?

11 A. Yes.

12 Q. Could she create a report that
13 has as one column the location ID number, as
14 another column the location name, as another
15 column the date on which the cancel reasons
16 were created and then as another column
17 cancel reason one and another column cancel
18 reason two?

19 A. I believe so. Sounds logical.

10:48

20 Q. Based on your understanding of
21 CMS and the reports that you've asked to be
22 run and reviewed in your work you believe
23 that that's possible?

24 A. Yes.

Amy Finley, 4/21/2014

64

1 Q. Would the information in those
2 cancel reason one and cancel reason two
3 fields be duplicated in other fields
4 automatically?

5 MR. BERNAY: Object to the form.
6 You can answer.

7 A. In cancel reason one and cancel
8 reason two would they be duplicated
9 somewhere?

10:49 10 Q. For instance in the comments
11 field or any other field or would they exist
12 in that particular field alone?

13 A. Well, this is just a drop down
14 field of the reason codes I believe.

15 Q. Uh-huh.

16 A. So if any -- if this information
17 was duplicated in the comment it would be
18 manually keyed.

10:49 19 Q. Uh-huh. And there's no reason
20 to believe that that happened?

21 A. What?

22 Q. That somebody manually keyed a
23 duplicate of each and every reason code given
24 in cancel reason one and cancel reason two

Amy Finley, 4/21/2014

65

1 into a common field.

2 MR. BERNAY: Object to the form.

3 A. They could have manually keyed
4 in the reason code? Or the -- I mean, they
5 could type in the reason code technical or
6 advertising or competitor, canceling due to
7 whatever, however they put it in the comment,
8 so that same word could be duplicated? I'm
9 not sure if I understand what you're --

10:50 10 Q. Well, you're saying --

11 A. -- meaning by duplicate.

12 Q. You're saying it could be. I'm
13 saying -- I'm asking you is it always?

14 A. Oh, I would say no because I
15 don't know that they always even fill out
16 cancel reason one and cancel reason two.

17 Q. They're not instructed to put a
18 cancel reason that they have selected from
19 these drop-down menus in their comment
10:50 20 fields, right?

21 A. Right.

22 Q. So if somebody did that it would
23 be of their own idea?

24 A. They're instructed to put the

Amy Finley, 4/21/2014

66

1 summary --

2 Q. Uh-huh.

3 A. -- with the cancel reason so in
4 that case then, yes, they would -- if they're
5 putting the correct summary, if they're
6 summarizing their comment properly, then
7 they're putting in the reason which that
8 reason would also potentially be in this
9 reason one or reason two if they completed
10 that portion in the database.

11 Q. There could be a one to one
12 relationship between these cancel reason one
13 and cancel reason two drop downs and the
14 reasons listed in the summary but there could
15 be differences between those two, right?

16 MR. BERNAY: Objection.

17 Q. We just don't know.

18 A. There could be differences.
19 There could be lots of things. Like I said,
20 I don't really recall how many people
21 utilized this particular fields in the
22 database.

23 Q. Whenever there's a competitor
24 that is replacing Patient Point's system in a

Amy Finley, 4/21/2014

67

1 practice's waiting room, does competitor
2 trump whatever other reasons there may be for
3 the cancel such that competitor is what you
4 enter as the reason code?

5 A. I look at each one individually
6 and depending on what the reasons are
7 determine which one trumps the other.
8 Typically, yes, competitor will trump moving
9 or content, remodeling.

10:52 10 Q. Can you think of an instance in
11 which a competitor has switched out Patient
12 Point's waiting room system but you selected
13 something other than competitor as the reason
14 code?

15 A. I do not recall. No.

16 Q. Do you suspect that you've done
17 that a lot or would that be pretty rare?

18 A. They would be pretty rare
19 looking at the reason codes.

10:53 20 Q. If a practice told the
21 relationship manager that Patient Point's
22 content was simple to the point of being
23 demeaning to the patients and told the
24 relationship manager that they were switching

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68

1 to Health Monitor and those comments were
2 reflected in the summary that the
3 relationship manager put into CMS, which
4 reason code would you pick: Content or
5 competitor?

6 A. Competitor.

7 MR. BERNAY: Objection.

8 Q. Can you picture a comment about
9 Patient Point's content that would trump

10:54 10 competitor as the reason code ever or if it's
11 content and competitor the reason code is
12 competitor?

13 MR. BERNAY: Object to the form.
14 You can answer.

15 A. If I know it's competitor I'm
16 going to pick competitor because
17 understanding that they switched to a
18 competitor I believe is more valuable than
19 noting the content comment.

10:54 20 Q. What about service issue? Would
21 the same be true if a practice gave
22 information that they had a negative
23 experience due to service but also indicated
24 that they were switching to a competitor?

Amy Finley, 4/21/2014

69

1 A. You would switch competitor or
2 would -- I'd choose competitor knowing that I
3 had the service comment in there. The same
4 thing would be content. I still have that
5 information about that practice --

6 Q. Right.

7 A. -- in the comment.

8 Q. And what about technical issue,
9 if a practice had experienced a negative
10 circumstance due to equipment failure and
11 also indicated that it was switching to a
12 competitor, would you in every case choose
13 competitor as the cancel reason?

14 A. I would switch -- I would choose
15 competitor.

16 Q. As you pointed out though, the
17 other information is in the comment field
18 that you're basing your reason code decision
19 on, right?

20 A. Right.

21 Q. So in a sense you are selecting
22 the number one reason in your mind in terms
23 of the importance for reason code tracking to
24 get the reports to the executive level but

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70

1 there's, you know, a more nuanced version of
2 the reasons that a practice leaves in the
3 comments field.

4 A. Correct.

5 Q. Do you have an opinion based on
6 your experience and Patient Point's policies
7 about which is the better information about
8 why a practice left between the reason code
9 that you've selected and the comments field
10:56 10 that people have entered?

11 MR. BERNAY: Objection. Object
12 to the form. You can answer.

13 A. Not sure I understand. I
14 don't -- I don't really quite understand what
15 you're asking so --

16 Q. Sure.

17 A. -- repeat that again.

18 Q. Do you report to Kimberly
19 Theiss?

10:57 20 A. Correct.

21 Q. If Ms. Theiss came to you and
22 said I would like to know the best
23 information that the company has about why
24 practice XYZ in Chicago decided to cancel.

Amy Finley, 4/21/2014

71

1 Do you follow my --

2 A. Yes.

3 Q. -- hypothetical so far?

4 A. Yes.

5 Q. Do you have an opinion about
6 whether the reason code that you've selected
7 from the drop-down list or the information
8 that's entered into the CMS comment fields
9 would be better suited to what Ms. Theiss was
10 asking?

10:57

11 MR. BERNAY: Objection. You can
12 answer.

13 A. I think that you could get value
14 from both. You know, we look at the reason
15 codes as ways to understand why practices may
16 leave. If you wanted to drill down further
17 one step further as to why say, for instance,
18 they said competitor to try to look at the
19 comment to understand more as to why they
20 chose that competitor, was it because of the
21 content, was it because they were having
22 service issues, was it because of that, you
23 could drill down -- if the relationship
24 manager was able to get that information, you

10:58

Amy Finley, 4/21/2014

72

1 know, you could get that from the comment but
2 just trying to do a straightforward here's
3 why someone cancelled, the reason code one is
4 what I would use.

5 Q. The reason code that you enter
6 is recorded as some sub part of what you
7 called the stage code, is that right?

8 A. Correct.

9 Q. If you asked Ms. Gustin to
10:58 10 create a report by practice location number,
11 practice location name, and then reason code,
12 would she be able to run that report for you?

13 A. Yes.

14 Q. Going back to Defendant's
15 Exhibit 209 on the second page which is
16 marked HAN 005789 under sub sub-paragraph
17 four it says the RM manager is required to
18 fill in the following fields, and cancel
19 reason is subparagraph A, the first thing
10:59 20 that they're supposed to enter, right?

21 A. That's what it says.

22 Q. And we've already discussed what
23 the actual practice is. Looking to the other
24 sub-subparagraphs B, C and D it says that

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73

1 they are also to enter the save strategy,
2 used to track how the location is being
3 saved; the requestor name, name of person
4 requesting to cancel the program; and the
5 requestor title, name of person requesting to
6 cancel the program's title. Are those pieces
7 of information things that the relationship
8 managers are supposed to enter in the
9 comments field?

11:00 10 A. They should enter in their
11 comments what they did to try to save the
12 location, who they spoke with. All of that
13 again, yes, would be captured in the
14 comments.

15 Q. Are any of those things that you
16 would then reenter or would the comments
17 field be the source of that information?

18 A. The comments field would be the
19 source.

11:00 20 Q. Is the picture that comes just
21 before paragraph five on HAN 005789 a screen
22 shot of some sort of CMS?

23 A. Yes.

24 Q. Is this whole picture a part of

Amy Finley, 4/21/2014

74

1 the system that's not used as a matter of
2 policy but may be used on an individual
3 basis?

4 A. This pending save tab, yes.

5 Q. When a relationship manager is
6 logged into CMS, do they see a screen with
7 these five tabs available: Targeting,
8 enrolling, installing, active, and pending
9 save?

11:01 10 A. There is a part in the database,
11 yes, that they can go to to see that
12 information.

13 Q. Are any of these tabs used as a
14 matter of policy and instruction or are they
15 all more informal than that?

16 A. The targeting is informal.
17 Enrolling, installing is act -- is actual
18 process. Active isn't. There's nothing
19 entered on the active. It's just a flow to
11:02 20 show that it starts from targeting to
21 enrolling, installing, active.

22 Q. Meaning if you click on active
23 there's no information to enter underneath
24 it?

Amy Finley, 4/21/2014

75

1 A. There's information there. I
2 don't think there's anything to enter under
3 that stage.

4 Q. Does pending save refer to the
5 status of a practice after it has told
6 Patient Point that it would like to cancel
7 but before the cancel has actually happened?

8 A. Yes.

11:03

9 Q. Looking at subparagraph five it
10 says, do not click the cancel program radio
11 button on the right-hand side of the save
12 tab. Is that a button that you click when
13 it's final or is that just something that's
14 not used?

15 A. I do not click that. I believe
16 that if -- you probably can -- you click that
17 it must do something that we don't want it to
18 do which is why it's stated there.

19 Q. Okay.

11:03

20 A. But, no, my field is located on
21 a different portion of the database to where
22 you're --

23 Q. And by my field you mean the
24 field that's visible when you enter the

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76

1 cancel reason -- the cancel -- the reason
2 code?

3 A. Right. When I switch it from
4 active to cancel with entering the reason and
5 then the competitor reason.

6 Q. That's a different part of the
7 database?

8 A. It's gonna -- above is -- it's
9 in the stage node. Kind of hard to describe.

11:04 10 Q. Is this series of five tabs a
11 different node?

12 A. No. It's under the same stage
13 node.

14 Q. When this WRN cancel process was
15 first communicated to the relationship
16 managers, was there training to go along with
17 it?

18 A. I think they just read through
19 the process.

11:04 20 Q. Is it discussed at a team
21 meeting?

22 A. When it was originally probably
23 presented, yes, but as new people come on
24 board it's more of just training people and

Amy Finley, 4/21/2014

77

1 they just shadow existing relationship
2 managers.

3 Q. Uh-huh. It's part of their
4 on-the-job training?

5 A. Right. They're -- right.
6 They -- they have a manual. They use this as
7 a reference.

11:05

8 Q. When the WRN cancel process was
9 first communicated to relationship managers,
10 did they have an opportunity to ask any
11 questions that they had about it?

12 A. I'm sure they did. Yes.

13 Q. And if they had asked questions
14 it would have been clarified to them?

15 A. Correct.

16 Q. If you flip to the fourth page
17 that's marked HAN 005791, there's some
18 handwriting at the top that says save talking
19 points. Do you see that?

11:06

20 A. Yes.

21 Q. Is that your handwriting?

22 A. Yes.

23 Q. Was this version of the WRN
24 cancel process collected from you?

Amy Finley, 4/21/2014

78

1 A. Yes.

2 Q. And when it was collected from
3 you was HAN 005791 and the pages that follow
4 it attached in some way to the WRN cancel
5 process document that's three pages long?

6 A. They were in the same manual.

7 Q. Do they appear after one another
8 in the manual or is there something in
9 between them?

11:06 10 A. I don't recall the order. I
11 provided them because we say that -- in the
12 beginning that we use save talking points.
13 These were the documents that we use for save
14 talking points.

15 Q. On the first page of Defendant's
16 Exhibit 209 in the first arrow it says
17 relationship manager attempts to save the
18 location by referencing save talking points
19 in their manual, and that refers to the save
11:07 20 talking points that are on page HAN 005791.
21 Do I have that right?

22 A. Correct.

23 Q. Are there different save talking
24 points depending on which competitor or if

Amy Finley, 4/21/2014

79

1 there's no competitor?

2 A. No. These -- these are the only
3 saves that -- close to competitor specific
4 would be these fact sheets that we have.

5 Q. Uh-huh.

6 A. Otherwise it's more information
7 about our content and speaking to, you know,
8 how our programs developed and, you know,
9 what's provided and things like that.

11:07 10 Q. So after a practice said that it
11 would like to cancel but before the
12 cancellation becomes final the talking points
13 on pages HAN 005791, 92, and 93 --

14 A. 93.

15 Q. -- are consulted as part of the
16 WRN cancel process, right?

17 A. Or even 94 and 95. Right.

18 Q. 94 and 95 which are titled
19 handling objections.

11:08 20 A. Right.

21 Q. Those five pages are the save
22 talking points.

23 A. Correct. Well, actually the
24 e-mail is -- we utilize the e-mail sample as

Amy Finley, 4/21/2014

80

1 well as a taking point.

2 Q. On --

3 A. Everything from this point where
4 it says save talking points on is -- can be
5 utilized as a resource.

6 Q. For the save talking points?

7 A. For the save talking points.

8 Q. All the way through HAN 005797?

9 A. Yes.

11:09 10 Q. Looking at HAN 005791, the first
11 page of the saved talking points, it
12 references rheumatology waiting room, right?

13 A. Yes.

14 Q. The far left column is kind of a
15 category of information column, right?

16 A. Yes.

17 Q. And then the middle column
18 Healthy Advice rheumatology.

19 A. Yes.

11:09 20 Q. And so that fills in what the
21 information is for Patient Point's own system
22 for the type of information that's being
23 listed?

24 A. Correct.

Amy Finley, 4/21/2014

81

1 Q. Then the column on the far
2 right, is that specific to the Rheumatoid
3 Health Network?

4 A. Yes.

5 Q. And that's put out by Context
6 Media, right?

7 A. Correct.

8 Q. Under the row accountable for
9 content in the Healthy Advice column it says
10 yes and in the Rheumatoid Health Network
11 column it says no. What does that mean?

12 MR. BERNAY: Hold on. I'm just
13 gonna note that HAN 5791 and 5792 were
14 previously produced on, I believe, as HAN 002
15 and HAN 0 -- and HAN 0024 and Mr. O'Brien did
16 ask questions of Ms. Finley of at least one
17 of these two documents at her deposition, so
18 again, I'll let Ms. Finley answer this
19 question but -- although this was produced
20 after March 26th, this is a document that
21 actually did appear previously in production.

22 A. The accountable for content
23 because Healthy Advice actually produces and
24 writes their content where Context Media

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Amy Finley, 4/21/2014

82

1 content is purchased.

2 Q. What is Patient Point's basis
3 for saying that RHN is not accountable for
4 content that it has purchased?

5 A. If their content is purchased
6 they're not necessarily liable for the
7 content. The person that produced it is
8 accountable for that content.

9 Q. It's a legal opinion about who
10 would be liable if someone was --

11 A. No.

12 MR. BERNAY: Object to the form.

13 A. I'm not saying that. I'm not
14 saying that. Basically what we were trying
15 to produce -- state here is that we take --
16 we're fully accountable for our content. It
17 was more so about ours and saying no for
18 rheumatology, we don't know 100 percent if
19 they are or not.

11:12 20 Q. Did anyone ask RHN or Context
21 Media if they consider themselves fully
22 accountable before no was put in this column?

23 A. We reviewed their website.

24 Q. Is that the full basis for this

Amy Finley, 4/21/2014

83

1 fact --

2 MR. BERNAY: All right. I'm
3 gonna -- I'm gonna instruct Ms. Finley not to
4 answer any more questions related to 5791 and
5 5792 simply because they were produced prior.
6 This is her second deposition. It goes to
7 documents that were produced after
8 March 26th. These are simply included for --
9 as part of what was provided to counsel for
10 production. Mr. O'Brien did ask Ms. Finley
11 questions about this document and again given
12 our understanding of what -- what was gonna
13 happen here today, I don't -- I don't want to
14 labor over a document that has already
15 been -- has been previously produced.

16 MR. HANKINSON: Is that a
17 forward going instruction? She answered this
18 question.

19 MR. BERNAY: Correct.

20 MR. HANKINSON: And did you get
21 the answer to that question?

22 THE REPORTER: (Nodded
23 affirmatively.)

24 MR. HANKINSON: Would you please

Amy Finley, 4/21/2014

84

1 refer to HAN 005794 and 95? What's the
2 purpose of this document titled handling
3 objections?

4 A. This document was originally
5 created for the sales team and was basically
6 reutilized for the relationship management
7 team.

8 Q. By putting it in their manual?

9 A. Correct.

11:14 10 Q. And what is it used for by
11 relationship managers?

12 A. As another resource for save
13 talking points or talking points in general.

14 Q. Please take a look under the
15 heading probing that may help at the third
16 bullet from the bottom where it states, we
17 know that you're all about compliance and so
18 are we. Our patient education outweighs
19 sponsoring far more than any other PE
11:15 20 programs. Is that statement made as a
21 suggestion for what a relationship manager
22 might say in their save talking points to a
23 practice representative?

24 A. This is again just here as a

Amy Finley, 4/21/2014

85

1 resource not necessarily what they would
2 state.

3 Q. It's phrased informally as a we
4 know that you are all about compliance. Is
5 that essentially like a script statement
6 that's there for them as a resource if they
7 want to use it?

8 A. Again, this was originally
9 scripted for the sales team that we just
10 repurposed for the relationship management
11 team, so I wouldn't state that this was
12 something that we wanted them to say
13 necessarily and quite frankly I'm not even
14 familiar with this phrase. I mean, I -- oh,
15 sorry. I mean, I'm -- I'm trying to
16 understand really myself what the meaning
17 behind this phrase was.

18 Q. Uh-huh. Well, that is what I
19 was gonna ask you.

20 A. Well, I -- I don't have the
21 answer for this. I did not write this
22 document.

23 Q. Do you know who originally wrote
24 it?

Amy Finley, 4/21/2014

86

1 A. It's been so long I -- the
2 person that wrote it I'm gonna say could be
3 Jill Brewer but -- because she was over the
4 sales team.

5 Q. Do you know about when this
6 document began being used by the sales team?

7 A. No, I don't.

8 Q. Do you know about when this
9 document began to be repurposed as part of
11:17 10 the save talking points?

11 A. We've probably had this in our
12 manual since 2010 at least.

13 Q. Who made the decision to include
14 it in the save talking points in the manual
15 for the WRN cancel process?

16 A. I did.

17 Q. I understand that you're saying
18 it was put in there as a resource. Am I
19 correct in understanding that to mean that it
11:18 20 is there as something that a relationship
21 manager can read and understand and use to
22 the extent that they see fit in talking with
23 a practice representative?

24 A. Yes.

Amy Finley, 4/21/2014

87

1 Q. Do you know what compliance
2 means in the bullet point that I read
3 earlier?

4 A. Compliance. Not in this case,
5 no.

6 Q. Just brainstorming. Something
7 to do with like health regulatory compliance
8 in trying to develop some camaraderie. Does
9 that ring any bells?

11:19 10 A. I --

11 MR. BERNAY: Objection to the
12 form.

13 A. I don't want to make any
14 assumptions.

15 Q. As Patient Point's designee to
16 give testimony about this document, the
17 company's best information at this time is
18 that it does not know what compliance means.
19 Do I have that correct?

11:19 20 MR. BERNAY: Object to the form.

21 A. In this -- in this document
22 here, no.

23 Q. The handling objections document
24 that is two pages long is currently a part of

Amy Finley, 4/21/2014

88

1 Patient Point's WRN cancel process in that
2 the relationship managers are to reference it
3 as a resource for their save talking points
4 under that process, right?

5 A. They can utilize this as a
6 resource.

7 Q. And the rest of my question was
8 correct as well?

11:19 9 A. What was the rest of your
10 question? I apologize.

11 Q. Sure. The handling objections
12 document that's on HAN 005794 and 95, is
13 currently a part of Patient Point's save
14 talking points that are referred to in the
15 WRN cancel process, correct?

16 A. Correct.

17 Q. Looking further at the third
18 bullet from the bottom of the HAN 005794 the
19 second sentence says, our patient education
11:20 20 outweighs sponsoring far more than any other
21 PE programs. PE is patient education, right?

22 A. Correct.

23 Q. Do you know what it means to say
24 that Patient Point's patient education

Amy Finley, 4/21/2014

89

1 outweighs sponsoring more than another
2 program?

3 A. I believe what that statement is
4 made -- and only because I've used this in
5 other references -- that the fact that the
6 program is sponsored the value of the patient
7 education should mean more to the practice
8 than the advertising sponsors.

9 Q. When you said you've used this
11:21 10 in other references, what were you referring
11 to?

12 A. In cases where we've had
13 practices state that they love the program
14 but they don't like the advertising.

15 Q. There's a distinction in this
16 bullet point between advertising and
17 sponsorship?

18 A. Sponsorship, advertisers to me
19 are the same.

11:22 20 Q. Okay.

21 A. The advertising -- they're the
22 sponsors of the program the advertisers. So
23 there's -- sponsor's advertisement is in the
24 program so that's the sponsorship.

Amy Finley, 4/21/2014

90

1 Q. Uh-huh. When you say that
2 because the patient education system is
3 sponsored, the value of the patient education
4 system to the patients would be more than
5 other advertising, I didn't quite understand
6 that.

7 A. No. To the -- to the practice.
8 So if a practice is liking our program but
9 yet wants to cancel or doesn't like the --
10 doesn't like the advertising portion of the
11 program, we try to reiterate the fact that
12 the value of the patient education that
13 they're receiving for free should outweigh
14 the fact that they have sponsors.

15 Q. More than competitors?

16 A. More than competitors.

17 Q. Just finishing the bullet point
18 that the value of Patient Point's system to
19 the practice that it gets for free outweighs
20 the sponsoring -- you know, the fact that
21 it's sponsored, the advertisements, far more
22 than any other PE programs. I was assuming
23 that that was a reference to competitors.

24 A. No. There's patient education

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91

1 programs that people can buy and purchase
2 content. I don't believe that was a direct
3 to competitors.

4 Q. Are they all sponsored?

5 A. There was points where there was
6 people that could buy patient education and
7 can buy things online. You can buy

8 brochures. Things like that. So the fact
9 that you're getting this free program that's

11:24 10 sponsored, you know, we're trying to say it
11 was outweighing the fact that -- that it
12 should outweigh -- the sponsorship should
13 outweigh that more so than other patient
14 education programs I would believe in this
15 case because sometimes you have to purchase
16 patient education which can be costly. We're
17 providing it to you for free. There's

18 sponsorship that comes along with it but
19 that's how we're able to provide it for free,
11:24 20 so you should be able to see the benefit of
21 that over having to purchase content. I
22 believe this was more towards purchasing
23 patient education than competitor.

24 MR. HANKINSON: I'd like to mark

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92

1 this as Defendant's Exhibit 210.

2 (Exhibit 210 identified.)

3 Q. Please take a moment and
4 familiarize yourself with this and let me
5 know when you're ready.

6 A. Okay. I'm ready.

7 Q. What is Defendant's Exhibit 210?

8 A. This is the cancel process.

9 Q. Do you know whether this version
11:26 10 of the cancel process was from before or
11 after the one that is Defendant's
12 Exhibit 209?

13 A. These are the same process.

14 Q. Did you review these two
15 versions of the document prior to the
16 deposition?

17 A. Yes.

18 Q. And you confirmed that they're
19 word for word?

11:26 20 A. I did not confirm they were word
21 for word but they're --

22 Q. If you could flip to the third
23 page.

24 A. Uh-huh.

Amy Finley, 4/21/2014

93

1 Q. The last line of text says
2 updated November 4th, 2010 and if you look at
3 the third page of Defendant's Exhibit 209
4 that same line says updated March 24th, 2014.

5 A. Correct.

6 Q. Does this confirm your
7 recollection that this cancel process was not
8 substantively updated between 2010 and the
9 current day?

11:27 10 A. Correct. This printed -- this
11 one with the updated 3/24/2014 was printed
12 out from the manual. The 11/4/2010 was taken
13 directly from a printed version of the
14 manual.

15 Q. There's an electronic version of
16 the manual?

17 A. Well, every document is saved
18 electronically. So I originally printed it
19 and then was then -- it was then also
11:28 20 provided or pulled directly from the manual.

21 Q. Uh-huh. Now, if you flip to the
22 next page HAN 005860 in Defendant's
23 Exhibit 210 that page and following one
24 ending in 61 are a different brochure of some

Amy Finley, 4/21/2014

94

1 sort, correct?

2 A. Correct.

3 Q. What -- can you explain?

4 A. So this was a sales piece that
5 was used back in 2010 and I believe 2009 that
6 we put in the manual to use as a saved
7 talking point at that time.

8 Q. Do you know when the other save
9 talking points from Defense Exhibit 209 were
10 used instead of this one?

11:29 11 A. I don't know the exact date when
12 these were added. The rheumatology facts
13 sheets would have been added in 2011. That's
14 when they were produced. I don't think we
15 could -- any of us could recall exactly when
16 this was put into the manual. It was
17 whenever we come across documents that we
18 felt would be utilized by this sale -- by the
19 relationship managers as a resource we would
11:30 20 add them to the manual, hence the reason for
21 they've kind of grown a little bit since the
22 last time --

23 Q. Uh-huh.

24 A. -- it was originally developed.

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95

1 Q. The brochure that's at the end
2 of Defense Exhibit 210 uses the term
3 rheumatology network. Patient Point no
4 longer uses that term for its network, right?

5 A. We with still use the
6 rheumatology.

7 Q. Does that refer to ACN?

8 A. Or -- arthritis care. Yes.
9 You're right. Sorry.

11:30 10 Q. So not to belabor the point but
11 that network was once called rheumatology
12 network and is now called arthritis care
13 network?

14 A. It's called arthritis care
15 network. It's also referred to internally as
16 rheumatology network. I think that's what my
17 confusion came. A lot of times we will refer
18 to programs by the specialty internally.

11:31 19 Q. But this as a -- as an example
20 of sales collateral this would be out of
21 date?

22 A. Yes. This is out of date.

23 (Exhibit 211 identified.)

24 Q. I'm handing you what we're

Amy Finley, 4/21/2014

96

1 marking as Defendant's Exhibit 211. Have you
2 seen this document before?

3 A. Yes.

4 Q. Is this a fax that was drafted
5 to send to particular practices that
6 subscribe to Healthy Advice's networks?

7 A. This is not a fax. This is a
8 team agenda topics that we were to discuss
9 and in reviewing this we talked about a fax
10 and e-mail that was going out to practices
11 and that gave them basically talking points
12 to reference if they were to get inbound
13 calls regarding the e-mail and fax.

14 Q. The second and third page of
15 Defense Exhibit 211 are a script, right?

16 A. Yes.

17 Q. The team that was meeting is
18 that practice relations and field sales?

19 A. Field sales support.

20 Q. Was that a -- sort of a joint
21 team meeting?

22 A. It's -- yes.

23 Q. Do they always meet together?

24 A. No. I don't -- No, they don't

Amy Finley, 4/21/2014

97

1 always meet together. Actually, I think that
2 was my title header. The teammates that were
3 invited was just PR.

4 Q. Uh-huh.

5 A. So that's the practice relations
6 team which is now known as the relationship
7 managers or relationship management team.

8 Q. The fax and e-mail that this
9 refers to did not mention Context Media by
10 name, right?

11 A. Correct.

12 Q. But they were sent out as a
13 response to what Patient Point thought it was
14 seeing from Context Media in the field,
15 right?

16 A. It was sent out in response to
17 that, yes.

18 Q. The script that's part of
19 Defendant's Exhibit 211 is a training piece
20 to prepare the relationship managers to field
21 questions about that fax and e-mail, right?

22 A. Correct.

23 Q. The expectation of Patient Point
24 was that a certain number of representatives

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98

1 from practices would call in, ask about the
2 e-mail and fax and -- right?

3 A. Yes. Whenever you send anything
4 to a practice you're typically going to get
5 at least one phone call.

6 Q. Was the expectation that the
7 practices who called -- let me start again.
8 To which selected practices was the fax and
9 e-mail sent?

11:35 10 A. The fax and e-mail were sent to
11 the locations that were active in our
12 arthritis care network and our primary care
13 network. Says it right there actually. Just
14 never read that.

15 Q. It was generally known by the
16 practice managers that this was in response
17 to Context Media, right?

18 A. I wouldn't say that.

19 Q. Well, the agenda says that it's
11:36 20 correspondence to all ACN and PNC
21 locations --

22 A. This is for --

23 Q. -- regarding --

24 A. -- relationship managers --

Amy Finley, 4/21/2014

99

1 relationship management team.

2 Q. Uh-huh.

3 A. To them this was in response to
4 what was going on with Context Media. This
5 is not what was stated to the practices.

6 Q. Uh-huh.

7 A. They knew what was going on
8 because they were the ones receiving the
9 phone calls in from practices stating that
10 Context was stating they had permission to
11 remove our equipment.

12 Q. Were the relationship management
13 team members instructed about whether or not
14 to mention Context Media by name in
15 discussing the e-mail and fax with
16 representatives of practices?

17 A. I don't believe I made the -- I
18 don't know if for 100 percent if I actually
19 stated that but I have always stated in the
20 past don't talk or mention a competitor's
21 name when you're speaking with a practice
22 unless they're actually referencing it then
23 you can speak to it but you should not
24 initiate that.

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100

1 Q. Did Patient Point document how
2 many calls of this nature it received?

3 A. If they received calls a comment
4 would have been entered but I don't believe
5 there would be a way to track it.

6 Q. There wasn't an instruction to
7 use a certain code or a certain word in the
8 field if the practice was asking questions
9 about the e-mail or the fax?

11:37 10 A. Well, I did state here that I
11 told them to send the comments to me.

12 Q. That arrive by e-mail?

13 A. Yes.

14 Q. Do you recall how many e-mails
15 you received that included a CMS comment
16 about a practice asking about the fax or
17 e-mail that related to Context Media?

11:38 18 A. What I recall is receiving
19 e-mail comments about practices stating they
20 were receiving calls from another company
21 that was calling them all the time, that they
22 received calls from another company that said
23 that they did have permission to remove our
24 equipment. We received calls from people

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101

1 that actually called to just verify they had
2 a service appointment and wanted to make sure
3 that it was truly with us.

4 Q. Those comments would be
5 reflected in e-mails that you saved in your
6 inbox or some part of your e-mail system,
7 right?

8 A. Yes.

11:39

9 Q. Did you have a policy to keep
10 those?

11 A. We had a policy to keep e-mails.
12 I -- I -- it's in my e-mails. Yeah.

13 Q. There wouldn't be additional
14 comments that were not in your e-mails?

15 MR. BERNAY: Object to the form.
16 You can answer.

17 A. Additional comments where? I
18 mean --

19 Q. Well, I mean --

11:39

20 A. -- I don't --

21 Q. -- you've -- you've -- you've
22 said that there wasn't a way of tracking it
23 but they were supposed to send you an e-mail.
24 So I'm trying to think, well, if I counted up

Amy Finley, 4/21/2014

102

1 the e-mails --

2 A. I wasn't tracking it.

3 Q. Uh-huh.

4 A. So bas -- basically I was asking
5 them to send me an e-mail so I could be aware
6 of what kind of comments they would receive.
7 Wasn't for me to take and then track all
8 those e-mails and count them up and see how
9 many we got. I wasn't doing that.

11:40 10 Q. Uh-huh.

11 A. It was just more of just for my
12 knowledge. If people did call in and say
13 something regarding it, I wanted to be able
14 to see what they were stating.

15 Q. I don't have any issue with your
16 process and your goal for business purposes.
17 I'm approaching this from a different
18 angle --

19 A. Uh-huh.

11:40 20 Q. -- which is after the fact I
21 would be interested in how many calls and how
22 many were actual confusion, if there were any
23 as you're stating, and comparing that to any
24 that were kind of false alarms and I know

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103

1 that that wasn't what your process was but
2 I'm trying to figure out if that can be
3 recreated now. Does that make sense?

4 A. Yeah.

5 Q. So when I asked about did you
6 keep all the e-mails --

7 A. Uh-huh.

8 Q. -- that related to practice's
9 comments about the e-mail or fax, what's the
10 answer to that question?

11:41 11 A. I -- I don't know. I mean,
12 depending on what the comment was, I mean, I
13 don't know if I deleted it or not. I don't
14 generally delete comments unless I'm trying
15 to make space for my inbox so I would like to
16 think that I have them but I don't even know
17 what I would search on to try to find those
18 comments. Because again it would have been
19 entered in the database as a comment. That
11:41 20 comment would have been forwarded over to me
21 through the database in an e-mail. What or
22 how that would have been tracked -- probably
23 should have found a better way to track it
24 but obviously did not so --

Amy Finley, 4/21/2014

104

1 VIDEOGRAPHER: Pardon me,
2 counsel. We're off the record.

3 (Break taken.)

4 VIDEOGRAPHER: We're on the
5 record with DVD number two.

6 MR. HANKINSON: I want to try to
7 run through to make sure I understand how
8 records, whether in CMS or by e-mail, of
9 practice's calls about the Context Media
11:50 10 response fax and e-mail were kept, so I'm
11 gonna just run through my understanding and
12 let me know if I'm right or wrong.

13 Referring to Defendant's
14 Exhibit 211, when a practice called in and
15 asked about the fax or e-mail that was sent
16 about Context Media's alleged activities in
17 the marketplace, the practice manager was
18 supposed to talk to them about it according
19 to the suggested script, right?

11:50 20 A. If they called in, yes.

21 Q. Right. They were supposed to
22 enter an entry about that conversation, a
23 summary of it, in CMS, right?

24 A. Yes.

Amy Finley, 4/21/2014

105

1 Q. And they were supposed to e-mail
2 you that CMS entry.

3 A. Correct.

4 Q. So at that point it existed in
5 CMS and it exists in your e-mail inbox,
6 right?

7 A. Right.

8 Q. That CMS entry is still there.
9 Those have not been --

11:51 10 A. Correct.

11 Q. -- deleted, right?

12 A. Correct.

13 Q. However, they would not always
14 have the term Context, Context Media, RHN or
15 rheumatology health network in them, right?

16 A. That's correct.

11:51 17 Q. And particularly if the practice
18 called in and was asking about the e-mail or
19 fax but it turned out that what they were
20 asking about had nothing to do with Context
21 Media, that CMS entry and the e-mail would
22 not say Context Media or RHN, right?

23 A. Correct.

24 Q. Then the e-mail version of the

Amy Finley, 4/21/2014

106

1 CMS entry may or may not still be in your
2 inbox, right?

3 A. Correct.

4 Q. Some of them were deleted but
5 some were saved in your inbox.

6 A. Could be. Yes.

7 Q. Is there any special file where
8 they're all put?

9 A. No.

11:52 10 Q. And you clean out your inbox
11 periodically?

12 A. I -- on e-mails that don't
13 pertain to this I try to. Now, again, when
14 this occurred 2012 so I would say that these
15 should be in there but again if they didn't
16 say Context Media or RHN could have been
17 deleted --

18 Q. Uh-huh.

19 A. -- but not intentionally. Let's
11:52 20 put it that way.

21 Q. Because they didn't say RHN or
22 Context Media even if they were in response
23 on the practice's part to the letter to the
24 fax or the e-mail about Context Media, they

Amy Finley, 4/21/2014

107

1 might not have said that in the body and
2 therefore it might be out of your e-mail at
3 this point.

4 A. It might be --

5 Q. And --

6 A. -- or it might still be there.

7 Q. Could go either way.

8 A. Could go either way.

9 Q. Either way, those are not in a

11:53 10 collection of, you know, e-mails related to
11 the Context Media fax and e-mail blast?

12 A. Correct.

13 Q. And likewise the CMS entries are
14 kept according to their normal fields so if
15 they don't say RHN, Context Media or another
16 word like that, they can't be searched in a
17 way that gathers up all the calls that were
18 about the Context Media fax and e-mail blast.

19 A. Correct.

11:53 20 Q. At the time that the fax and
21 e-mail blast went out Patient Point knew that
22 it was considering suing Context Media,
23 right?

24 A. That's 2012 --

Amy Finley, 4/21/2014

108

1 MR. BERNAY: Objection. You can
2 answer.

3 A. I don't recall the exact date of
4 when the decision was made --

5 Q. Do you remem --

6 A. -- and I'm not -- I'm not the
7 person that makes that decision either.

8 (Exhibit 212 identified.)

9 Q. I'd like to hand you what we're
11:54 10 marking as Defendant's Exhibit 212. Just
11 glance through this to familiarize yourself
12 with it but I'm only gonna ask you about one
13 particular sentence on it. When you're ready
14 flip to HAN 005854.

15 A. Okay.

16 Q. There's a sentence on here that
17 says at the bottom, act now, enrollment is
18 limited and only available for select
19 offices. Defendant's Exhibit 212 is a
11:55 20 marketing piece for Healthy Advice's in
21 waiting room networks, right?

22 A. Correct.

23 Q. De --

24 A. Sales collateral.

Amy Finley, 4/21/2014

109

1 Q. Meaning this type of thing would
2 be sent to or dropped off at practices?

3 A. Could be, yes.

4 Q. The intent is that it would be,
5 right?

6 A. That it would be left behind
7 after a sales rep was there, yes.

8 Q. So is this particular to a
9 par -- to a specialty or could this be any
10 particular network?

11:56

11 A. This is a folder with tabs
12 inside and each -- there is a tab for
13 specialty at the top.

14 Q. So it looks like we're looking
15 at a primary care section.

16 A. Right. Which they're pretty
17 similar. It -- really the only difference is
18 probably the content at the top and the
19 messages. More custom as to -- regarding
20 rheumatology.

11:56

21 Q. If this was adjusted for ACN?

22 A. Or women's health if it was
23 adjusted for OB-GYN.

24 Q. Do you believe that the sentence

Amy Finley, 4/21/2014

110

1 at the bottom of HAN 005854 is on both ACN
2 and PCN sales collateral?

3 A. This is part of the folder part,
4 so this is the flap on the inside. So this
5 is the folder which would mean -- yes, this
6 would be utilized for all the waiting room
7 programs.

8 Q. Is the whole folder left behind
9 at the practice including all the tabs for
10 all the networks?

11 A. No.

12 Q. But the sales rep is supposed to
13 put in the information that applies to that
14 practice and leave the folder?

15 A. Correct.

16 Q. So this sentence would be left
17 with the practice as part of a folder if this
18 was a PCN advertisement and if this was a A
19 CN advertisement?

20 A. This folder would be -- could
21 be, yes.

22 Q. Among other things.

23 A. Could be.

24 Q. The intent is that it would be,

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111

1 right?

2 A. They are supposed to -- yes,
3 they would -- the idea is to have a folder to
4 make it easy for them to leave whatever they
5 wanted to leave behind, but typically we
6 instruct our sales reps not to leave things
7 behind because you didn't want to leave your
8 materials. It was more of a reason for a
9 practice to say, yeah, we looked over it but
10 we don't -- we're not interested. So
11 typically they would tell people to hold your
12 materials, bring it with you to show and use
13 as your presentation and talk and go over
14 things but if you could not to leave it
15 behind because it's sort of leaving your
16 goods behind if you do that.

17 Q. So the intent is that the
18 practice representatives and decision makers
19 would see the folder and the sales
20 collateral, right?

21 A. Yes, they would see it.

22 Q. And it's addressed to them,
23 right?

24 A. Yes.

Amy Finley, 4/21/2014

112

1 Q. What does the sentence
2 enrollment is limited and only available for
3 select offices mean?

4 A. I believe it was used as a call
5 of sense of urgency. Put a sense of urgency.

6 Q. Is enrollment limited?

7 A. Yes.

8 Q. So there's a cap on the number
9 of subscribers to ACN?

11:59 10 A. There -- at particular times
11 there may have been.

12 Q. Is there a cap to the number of
13 subscribers in PCN?

14 A. I don't believe we've ever had a
15 cap for primary care.

16 Q. So this sentence would be
17 accurate for ACN and possibly some of the
18 other networks but it would not be accurate
19 for PCN?

11:59 20 A. It's only available for select
21 offices. Meaning you have to be a primary
22 care specialty in order to receive it or you
23 have to be -- for select offices meaning you
24 have to be of that specialty to receive the

Amy Finley, 4/21/2014

113

1 program so you're sort of limiting who gets
2 the program based on that. Based on the
3 specialty.

4 Q. Uh-huh. So enrollment is
5 limited. You referred to a cap on the number
6 of subscribers in a network, right?

7 A. There could be, yes.

8 Q. At various times there may have
9 been.

12:00 10 A. In the past. Yes.

11 Q. But not as to PCN?

12 A. Correct.

13 Q. And then available for select
14 offices, you must be a rheumatologist or
15 something of the like to get ACN in your
16 waiting room, right?

17 A. Correct.

18 Q. And then you must be a primary
19 care physician to get PCN in your network,
12:00 20 right?

21 A. Correct.

22 Q. How would you find out when caps
23 were in place on the number of subscribers in
24 ACN?

Amy Finley, 4/21/2014

114

1 A. Well, basically the cap is more
2 of an expansion so maybe we're only gonna
3 grow this network or something by 300 more
4 physicians. So if we're only expanding to a
5 certain number of physicians -- physicians at
6 that particular time span, that's what --
7 that's what enrollment is limited mean --
8 really means.

9 Q. Are you aware of a practice
12:01 10 being turned away?

11 A. Of being turned away? Yes.

12 Q. And that's when the expansion
13 has been reached?

14 A. It could be for that or it could
15 be because of their specialty. We have lots
16 of leads in from different specialties that
17 want our waiting room screens that are not of
18 the specialty we have a program for them.

19 Q. They're siphoned off into a
12:01 20 different program?

21 A. If we have a program available
22 for them. Sometimes we get leads in for
23 osteo -- orthopedics a lot and we don't have
24 an orthopedics program.

Amy Finley, 4/21/2014

115

1 Q. Uh-huh.

2 (Exhibit 213 identified.)

3 Q. I'm handing you what we're
4 marking as Defendant's Exhibit 213. Sorry
5 about that. Is Defendant's Exhibit 213 a
6 list of what is referred to as sound
7 inquiries?

8 A. It appears, yes.

12:03

9 Q. WRN-CN-INQRY-sound under
10 inventory item appears in all of the rows,
11 right?

12 A. Yes. But there's also the sound
13 complaint.

14 Q. Ah, yes. Two of these have that
15 and then complaint after a period, right?

16 A. Correct.

17 Q. Is -- are those codes in the
18 column inventory item codes that CMS uses to
19 track practice comments about sound?

12:03

20 A. They are orders that are created
21 to track practices inquiring about sound.

22 Q. They're separate from a comments
23 field.

24 A. Well, the com -- the comment

Amy Finley, 4/21/2014

116

1 would probably be tied to it but there would
2 be -- and there would be a comment in the
3 database for it but inventory item is the
4 actual order that you can use to run a report
5 like this.

6 Q. When a practice tells a
7 relationship manager I want sound in my loop,
8 is the policy or instruction to the
9 relationship manager to code that in the
10 database as sound inquiry?

11 A. They should inquire -- they
12 should notify them of the sound that we
13 currently have in the program and make sure
14 that their volume is obviously adjusted.
15 Sometimes our practices just have their
16 volume down all the way. But, yes, if
17 they're interested in wanting more sound then
18 we would have them enter a sound inquiry
19 order.

20 Q. When did that start?

21 A. For as long as I can remember
22 we've done that.

23 Q. Have there been sound inquiries
24 prior to 2011?

Amy Finley, 4/21/2014

117

1 A. There could be.

2 Q. You're not sure one way or the
3 other?

4 A. I would have to run the report
5 to see.

6 Q. But you recall that sound
7 inquiries were tracked prior to 2011?

8 A. Again, that I recall. I don't
9 know exactly when we created this order in
10 the database.

12:05

11 Q. If Ms. Theiss came to you and
12 said I'd like you to work with Ms. Gustin, or
13 whoever you can get in IT, and give me a list
14 of practices who told Patient Point that they
15 wanted more sound than Patient Point had to
16 offer, what steps would you take?

17 A. If they requested they wanted
18 more sound. If I wanted to see how many
19 locations, I would pull a report on this
20 inventory item WRN CM inquiry sound to get my
21 list.

12:06

22 Q. You believe that that would be
23 at least slightly under inclusive because
24 it's possible that a practice relationship

Amy Finley, 4/21/2014

118

1 manager would enter the sound inquiry in the
2 CMS field but not make a sound inquiry work
3 order, right?

4 A. You mean it could be possible
5 that they stated it in the comment but not
6 created this order?

7 Q. Yes.

8 A. That could be possible. Yes.

9 Q. How complete do you think your
12:06 10 list for Ms. Theiss would be if you based it
11 just on the sound inquiry order report?

12 MR. BERNAY: Object to the form.
13 You can answer.

14 A. I feel it would be fairly
15 complete.

16 Q. And have you seen Defendant's
17 Exhibit 213 in your preparation for this
18 deposition?

19 A. I've seen this sound inquiry
12:07 20 report, yes.

21 Q. Do you believe this to be a
22 complete list of all sound inquiry reports
23 between July 2010 and March 2013?

24 A. Yes.

Amy Finley, 4/21/2014

119

1 MR. BERNAY: That's fine.

2 MR. HANKINSON: No. Go ahead.

3 MR. BERNAY: No. No. That's
4 fine.

5 MR. HANKINSON: I'm going to
6 hand you -- I'm going to hand you what we're
7 marking as Defendant's Exhibit 214.

8 (Exhibit 214 identified.)

9 Q. Did you see this document in
12:08 10 your preparation for your deposition?

11 MR. BERNAY: Take a minute to
12 look at the document.

13 A. It's hard for me to tell exactly
14 which document this is.

15 Q. What I've been told about this
16 document is that it is a report of the
17 cancels -- of canceled orders but it was
18 inadvertently incomplete. Does that match
19 your understanding?

12:08 20 A. Inadvertently canceled orders so
21 basically the saves.

22 Q. It was intended to be saves --

23 A. Saves.

24 Q. -- but it might not be complete?

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Amy Finley, 4/21/2014

120

1 A. Correct.

2 Q. Do you have an understanding of
3 what caused this report to not have other
4 cancels of cancels or saves in it?

5 A. Well, because this report --
6 actually, if you notice, this stage code says
7 canceled so these are the saves that then
8 after the fact canceled. We saved them
9 basically once but then later then they
10 canceled. What was not produced on here,
11 which should have been, is the ones that were
12 still active.

13 Q. So these were temporarily saved.

14 A. Correct.

15 Q. Is there a way to tell from
16 Defendant's Exhibit 214 for what period of
17 time the practice subscribed after they
18 requested to be canceled for the first time
19 until they were actually canceled after the
20 second request or thereafter?

21 MR. BERNAY: Object to the form.
22 You can answer.

23 A. If you look at the column that
24 says order status date, it's the fourth one

Amy Finley, 4/21/2014

121

1 in from the -- yes. The order status date
2 was the date that the order was canceled
3 which means that's when it was saved.

4 Q. Okay.

5 A. So if you take that column and
6 look at the stage date which is seven columns
7 or seven rows in -- columns in, that would
8 kind of give you your time span.

12:10

9 Q. The column titled stage date is
10 the ultimate cancellation date?

11 A. Correct.

12 Q. The column titled order status
13 date is when the initial request to cancel
14 was recorded.

15 A. It was when the initial request
16 to cancel --

17 Q. Oh. When the --

18 A. -- order was canceled.

19 Q. That's the save date.

12:10

20 A. Which, yes, is ultimately the
21 save date.

22 Q. Is there a comment field
23 associated with a cancel of a cancel order?

24 A. It would be the same order that

Amy Finley, 4/21/2014

122

1 was -- or same comment that's produced with
2 the cancel. Cancel comments. They're the
3 same. The only difference is whether -- the
4 difference between it is whether or not we
5 canceled the order or closed the order.

6 Q. The order meaning the cancel
7 order?

8 A. Correct.

12:11 9 Q. And if you close the cancel
10 order it means that you actually fulfilled
11 the order meaning you canceled the practice's
12 subscription?

13 A. Correct.

14 Q. If you cancel the cancel order
15 it means the practice was saved. This report
16 could be run with a comments field, correct?

17 A. Yes, you could add a comments
18 field.

12:11 19 Q. And it would be the comment that
20 accompanied, if any, the ultimate cancel or
21 could you get the comment that accompanied
22 the save?

23 A. Well, when you pull the comments
24 for the cancels that pertain to the cancels

Amy Finley, 4/21/2014

123

1 you're basically gonna get both. If that
2 makes sense.

3 Q. Because even if there's a
4 status -- huh. Well --

5 A. There's not a comment that's
6 tied to stage code.

7 Q. Okay. There's a comment tied
8 to --

9 A. Your cancel comments.

12:12 10 Q. Order status code.

11 A. Inventory item.

12 Q. That would comment on why the
13 cancellation was requested, right?

14 A. Right.

15 Q. Is there a comment on how it was
16 saved?

17 A. If it would, it would still be
18 within that same comment.

12:13 19 Q. Because the cancel order would
20 be open and all the comments would be
21 associated with it?

22 A. It should be all associated
23 together.

24 (Exhibit 215 identified.)

Amy Finley, 4/21/2014

124

1 Q. I'm handing you what we're
2 marking as Defendant's Exhibit 215. If
3 Mr. Bernay doesn't object, I suggest that you
4 break the staple.

5 MR. BERNAY: No objection.

6 MR. HANKINSON: Did you review
7 Defendant's Exhibit 215 in your preparation
8 for this deposition?

9 A. Yes.

12:13 10 Q. What's your understanding of
11 what this document shows?

12 A. So these are the actual saves
13 that were saved.

14 Q. Permanently saved?

15 A. They're still active today, yes.

16 Q. And you're seeing that in the
17 stage code column still saying active.

18 A. Correct.

12:14 19 Q. But the order status code says
20 canceled just like in Defendant's
21 Exhibit 214 --

22 A. Correct.

23 Q. -- because the cancel was
24 canceled.

Amy Finley, 4/21/2014

125

1 A. Correct.

2 Q. All right. If we added both
3 Defendant's Exhibit 214 and Defendant's
4 Exhibit 215, would that be a complete list of
5 saves for the period of July 2010 to
6 March 2013?

7 A. For that period, yes.

8 Q. Do you know approximately how
9 many cancel orders happened during that time
10 period?

11 A. No, I do not. That's a lot of
12 data.

13 Q. Would you expect the saves to be
14 about one-tenth or less of the total cancel
15 orders based on your experience?

16 MR. BERNAY: Object to the form.

17 A. I couldn't say. I haven't
18 looked at it that way.

19 Q. Saves are relatively rare after
20 a cancelation order, correct?

21 A. No. I just don't do my reports
22 that way.

23 Q. Well, I'm asking you like --

24 A. Oh.

Amy Finley, 4/21/2014

126

1 Q. -- aren't they relatively rare?

2 A. Oh. No. I mean, no, I don't
3 think that they're relatively rare but, you
4 know, I think it just depends on the
5 situation and where they are in -- in the
6 process of the cancel and when we actually
7 get notified of it. So depends on sooner we
8 can -- we hear about it the more likely we
9 are to be able to save it. Later in the fact
10 we are less likely. Your chance of -- your
11 chances go down or decrease.

12 Q. Later in the sales cycle?

13 A. Later in -- when they want to
14 cancel. So if we're notified later in the
15 process they're canceling, we're not able to
16 get wind beforehand, it's harder to save it
17 after they've already made up their mind
18 about something versus when they're thinking.

19 (Exhibit 216 identified.)

20 Q. I'm handing you what we're
21 marking as Defendant's Exhibit 216. Is
22 Defendant's Exhibit 216 the agenda for the
23 rheumatologist webinar that you mentioned
24 near the beginning of this deposition?

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Amy Finley, 4/21/2014

127

1 A. Yes.

2 Q. How many attendees were there at
3 webinar?

4 A. One.

5 Q. The targeted number of
6 attendees, three?

7 A. Yes.

12:17 8 Q. Did any followup with other
9 rheumatologist practices occur along the same
10 lines as this agenda?

11 A. No.

12 Q. Did you believe that Patient
13 Point got useful information from the
14 webinar?

15 A. No.

16 Q. Why not?

17 A. Because it was unsuccessful.

18 Q. And what's that?

12:17 19 A. We were not able to -- the
20 participant was having computer issues and we
21 were not able to really proceed with the
22 webinar in the fashion that we wanted to be
23 able to proceed.

24 Q. The participant couldn't see the

Amy Finley, 4/21/2014

128

1 program?

2 A. Right. They couldn't see
3 anything or get into basically a go-to
4 webinar meeting with us. So it was more of
5 just questions.

6 Q. So did you conduct the webinar?

7 A. I did not.

8 Q. Who conducted it?

9 A. Would be Nicki Cloran.

12:18 10 Q. And that's who you spoke to
11 about this prior to the deposition?

12 A. Correct.

13 Q. Is the handwriting on here
14 Nicki's handwriting?

15 A. Yes.

16 Q. Tell me her last name again.

17 A. It's -- I believe it's Cloran,
18 C-L-O-R-A-N. I don't know if that's exact
19 pronunciation or not.

12:18 20 Q. Initially was the idea that the
21 participants in the webinar would be paid for
22 their participation?

23 A. Yes.

24 Q. Is it true that this participant

Amy Finley, 4/21/2014

129

1 was not actually paid?

2 A. Correct.

3 Q. Was that decision made before or
4 after the webinar?

5 A. I believe it was made after when
6 the webinar was unsuccessful.

7 Q. The participant was told that
8 they would receive compensation for the
9 webinar?

12:19 10 A. Prior to.

11 Q. And then because it didn't --
12 the participant wasn't able to connect to see
13 the presentation of the webinar then the
14 compensation was not given?

15 A. Correct.

16 Q. Was that the only reason that
17 the compensation was not given?

18 A. Correct.

12:20 19 Q. The document that is Defendant's
20 Exhibit 216 is an internal Patient Point
21 document, right?

22 A. Yes.

23 Q. This was not shown to the
24 webinar participant?

Amy Finley, 4/21/2014

130

1 A. Correct.

2 Q. And was not intended to be
3 shown?

4 A. No.

5 Q. Rather the numbered paragraphs
6 and then the subparagraphs under them are
7 comments and questions that were gonna be
8 asked as an accompaniment to whatever the
9 presentation through the webinar was gonna be
10 shown on the screen?

12:20

11 A. Correct.

12 MR. HANKINSON: I'm sorry.
13 Are -- are you good to go? Okay. I don't
14 want to go too fast. Thank you.

15 Q. To whom was the rheumatologist
16 webinar agenda circulated?

17 A. Myself, Liz Phillips, Nicki,
18 Emily Hines and I believe that's it.

19 Q. Who wrote it?

12:21

20 A. Nicki wrote it and then
21 circulated it for edits.

22 Q. Did anyone comment?

23 A. I'm sure people made comments to
24 get it to where it ended. This was the final

Amy Finley, 4/21/2014

131

1 version.

2 Q. Did you make any edits to the
3 initial draft?

4 A. I don't recall if I made any --
5 any edits to this.

6 Q. You could have, you just don't
7 remember?

8 A. I don't remember.

9 Q. The -- is what I'm looking at
10 the final version?

11 A. Yes.

12 Q. So its -- was it approved by all
13 four of you: Liz Phillips, Nicki Cloran, and
14 Emily Hines?

15 A. Yes.

16 Q. The primary issue that's listed
17 at the top of the agenda states majority of
18 the practices who leave ACN for RHN do so
19 because of content. ACN is arthritis care
20 network?

21 A. Correct.

22 Q. Is that a program in the waiting
23 rooms of physicians that is provided by
24 Patient Point?

Amy Finley, 4/21/2014

132

1 A. Yes, it is.

2 Q. RHN is rheumatoid health
3 network?

4 A. Correct.

5 Q. Is that a program in the waiting
6 rooms of physicians that's provided by
7 Context Media?

8 A. Yes.

12:22 9 Q. Do you believe that the comment
10 in this rheumatology webinar is correct that
11 the majority of practices who leave ACN for
12 RHN do so because of content?

13 A. That's what we have been told --

14 Q. By the practices?

15 A. -- on the comments -- based on
16 comments that we reviewed, yes.

17 Q. The comments that you reviewed
18 were in CMS, correct?

19 A. Correct.

12:23 20 Q. Those are the same comments that
21 you use to pick a reason code in association
22 with cancels of practices who subscribe to
23 networks, right?

24 A. Right.

Amy Finley, 4/21/2014

133

1 Q. Is it an ordinary practice for
2 Patient Point to host webinars or conference
3 calls to get feedback about its programming?

4 A. We do conduct focus groups, yes,
5 on our programming.

6 Q. This rheumatologist webinar
7 agenda isn't the only document of its kind?

8 A. There's other focus group
9 agendas, I'm sure, out there. Yes.

12:24 10 Q. And this is prepared in the same
11 way that other focus group agendas are
12 generally prepared?

13 A. I don't know if this was
14 prepared -- I don't conduct the focus groups.
15 Our research department does --

16 Q. Uh-huh.

17 A. -- so I don't know exactly how
18 they conduct each focus group. I'm sure it's
19 similar.

12:24 20 Q. As Patient Point's designee
21 today as to questions about this document,
22 it's the company's best knowledge that the
23 rheumatologist webinar agenda that is
24 Defendant's Exhibit 216 is prepared in a

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Amy Finley, 4/21/2014

134

1 similar way to the agendas of Patient Point's
2 other focus groups conducted by the research
3 department, right?

4 MR. BERNAY: Objection. I
5 object to the -- the extent that she's the
6 designee on the document. She's the designee
7 as to the topics described in 19 and 20 of
8 the notice. You can answer.

9 A. Yes. I mean, again, I -- I know
12:25 10 that this was a document that was used for
11 this webinar. I did not review or -- all of
12 the other focus group agendas and -- and how
13 they were conducted or, you know, in the past
14 to know if this was exactly the same way it's
15 done every time they do a focus group, so I
16 can't enter or answer 100 percent that this
17 is exactly the same way we always do them,
18 but, you know, this is the research
19 department that did create the -- the webinar
12:25 20 or generated it.

21 Q. Is it your impression that they
22 created it in the ordinary course of their
23 work doing research for Patient Point?

24 A. This was a request actually. I

Amy Finley, 4/21/2014

135

1 believe I actually initiated the request to
2 get some feedback on -- from practices for
3 this.

4 Q. Do you recall who drafted the
5 sentence that comes after primary issue?

6 A. I would believe that would be
7 Nicki created the document.

8 Q. Did all four of the people that
9 this was circulated to sign off on the final
10 version that includes that sentence?

11 MR. BERNAY: Object to the form.

12 A. You asked me this question
13 already. Yes.

14 Q. This document was created as
15 part of yours, Liz Phillips, Nicki Cloran's
16 and Emily Hines' work for Patient Point,
17 right?

18 A. Right.

19 Q. It was within your duties.

20 A. It -- however -- I'm not really
21 sure how to take that but, yes, we did create
22 this together and signed off on this
23 document.

24 Q. The objective, desired outcome,

Amy Finley, 4/21/2014

136

1 and secondary headings and the sentences and
2 questions that come after them were also
3 prepared in the course of your duties and
4 approved by all four of the people that we
5 talked about, right?

6 A. Yes.

7 Q. And the goal of this document
8 was to acquire information that Patient Point
9 could use in its business, right?

12:27 10 A. Yes.

11 Q. You said that you requested this
12 one, right?

13 A. I put in a request to find a way
14 to do some research, get feedback basically,
15 from practices on our content.

16 Q. What was the -- why did you
17 submit that request?

18 A. Because I wanted to understand
19 better whether or not it was truly our
12:28 20 content that practices didn't like or if it
21 was something else. I viewed the comparison
22 of RHN's content to our content as more of
23 they were looking at RHN's features that --
24 you know, the extras like the weather and the

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Amy Finley, 4/21/2014

137

1 news and not necessarily the content. So I
2 was trying to really understand is it just
3 the news and the weather that they're liking
4 better about the program or is it truly the
5 actual educational content.

6 Q. Have you reached a conclusion on
7 that?

8 A. No, I have not.

12:29

9 Q. Is there additional research
10 that has been done?

11 A. No, there hasn't been.

12 Q. In any event, the question that
13 you were seeking to ask in -- or to explore
14 in making the request was whether the
15 perceived difference in content between ACN
16 and RHN on the part of practices was based on
17 the patient education component primarily or
18 whether it was influenced by other aspects of
19 RHN's program that were not patient
12:29 20 education --

21 A. Correct.

22 Q. -- right?

23 MR. BERNAY: Object to the form.

24 A. Correct.

Amy Finley, 4/21/2014

138

1 Q. Regardless, when a practice was
2 reporting that content was the reason that
3 they switched to a competitor, whether they
4 were referring to patient education content
5 or other aspects of content like a news
6 ticker or weather reports, the switch would
7 still be based on what's in the loops, right?

8 MR. BERNAY: Object to the form.
9 You can answer.

12:30 10 A. The switch -- I -- we -- they
11 switched based on what they told us. So if
12 they stated we like their content better, we
13 would note that but again was it really the
14 content or was it really the extras?

15 Q. The bells and whistles?

16 A. The bells and whistles.

17 Q. And that's what your request to
18 do research on this topic was intended to
19 explore.

12:30 20 A. Correct.

21 MR. BERNAY: It's 12:30.

22 MR. HANKINSON: Is it really?

23 MR. BERNAY: So you'd better
24 call. Yes. Time flies when you're having

Amy Finley, 4/21/2014

139

1 fun.

2 MR. HANKINSON: Go off the

3 record.

4 VIDEOGRAPHER: We're off the

5 record.

6 (Lunch break taken.)

7 VIDEOGRAPHER: We're on the

8 record.

9 MR. BERNAY: I think we did want

01:12 10 to correct a couple things before we resumed

11 questioning on -- on the record, so Amy.

12 THE WITNESS: Okay.

13 MR. BERNAY: I think it's this

14 one and it's in relation first to you had

15 asked a question earlier about Exhibit 215.

16 THE WITNESS: Yes. And are

17 you --

18 MR. HANKINSON: Oh, no. No.

19 A. In regards to this I believe I

01:12 20 was asked if this was all of the -- these are

21 two different.

22 MR. BERNAY: They go together.

23 THE WITNESS: Oh, do they?

24 Okay. In regards to all of the cancels

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Amy Finley, 4/21/2014

140

1 for -- that -- that were saved and the aspect
2 of that, it was actually the ones that were
3 just canceling with the intent to go to a
4 competitor. We obviously have other reasons
5 why people may cancel that we would save a
6 practice from. That was correction on that.

7 MR. HANKINSON: I'll let you
8 finish making whatever statements you want to
9 make and then I'll resume questioning.

01:13 10 MR. BERNAY: Sure.

11 THE WITNESS: Okay. I don't
12 remember what I stated on this one.

13 MR. BERNAY: I don't -- that --
14 that's fine.

15 THE WITNESS: This is the one
16 that I remember.

17 MR. BERNAY: Yes. That's fine.

18 THE WITNESS: Okay.

19 MR. BERNAY: I don't --

01:13 20 THE WITNESS: I mean --

21 MR. BERNAY: -- usually do this
22 so just to correct the record. In terms of
23 who you spoke with --

24 THE WITNESS: Yes.

Amy Finley, 4/21/2014

141

1 MR. BERNAY: -- in 30(b)(6).

2 THE WITNESS: In who I spoke
3 with, I left off Kimberly Theiss. I forgot
4 that I did speak to Kimberly in regards to
5 the processes that she has with her vendors.

6 MR. BERNAY: That's that.

7 MR. HANKINSON: All set?

8 THE WITNESS: Yes.

9 MR. HANKINSON: Thank you.

01:14 10 THE WITNESS: It is.

11 MR. HANKINSON: I appreciate it.

12 With respect to your conversation with
13 Ms. Theiss did that have to do with warehouse
14 and installation or deinstallation vendors?

15 A. The deinstallation vendors, yes.

16 Q. Was there any other aspect to
17 your conversation with Ms. Theiss in
18 preparation for this deposition?

19 A. No.

01:14 20 Q. With respect to Defendant's
21 Exhibit 215, your clarification is that the
22 permanent saves or at least the saves that
23 are still active in Patient Point's networks
24 to today's date that are listed in

Amy Finley, 4/21/2014

142

1 Defendant's Exhibit 215 are the subset of
2 such saves where the reason for the cancel
3 that was provided by the practice was that a
4 competitor was going to switch out the
5 system?

6 A. Okay. Not quite sure I
7 understand how you phrased that.

8 Q. Let me -- let me try again --

9 A. Okay.

01:15 10 Q. -- because I'm just trying to
11 speed up --

12 A. Yeah.

13 Q. -- rather than slow down.

14 A. No.

15 Q. So Defendant's Exhibit 215 is a
16 list of saves that are currently active in a
17 Patient Point network, right?

18 A. Correct.

01:15 19 Q. Your clarification is that there
20 are additional saves of practices that are
21 currently active in a Patient Point network.
22 The ones that are listed in Defendant's
23 Exhibit 215 are those where the reason for
24 the initial cancel order before the save had

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Amy Finley, 4/21/2014

143

1 to do with a competitor.

2 A. Correct.

3 Q. Your conversation with
4 Ms. Theiss in preparation for the deposition
5 today specifically was that about the
6 handling of equipment, including obsolete
7 equipment, in interacting with Patient
8 Point's vendors for installation?

9 A. My conversation with Ms. Theiss
01:17 10 was actually confirming the documents
11 provided the process with the vendor were
12 still current today.

13 Q. So the documents that have been
14 produced related to deinstallation vendors
15 and agreements with those vendors and
16 instructions given to those vendors are
17 current as of today?

18 A. Yes.

19 MR. HANKINSON: What's the next
01:17 20 exhibit?

21 THE REPORTER: 217.

22 MR. HANKINSON: I'd like to mark
23 Exhibit 217.

24 (Exhibit 217 identified.)

Amy Finley, 4/21/2014

144

1 Q. Ms. Finley, have you seen
2 Defendant's Exhibit 217 before?

3 A. Yes.

4 Q. What is it?

5 A. Just want to make sure I -- let
6 me read it real fast to make --

7 Q. Uh-huh.

8 A. -- sure I have the right one.

9 Yes. This document was used as a -- a guide
01:18 10 to make calls to previous Healthy
11 Advice/Patient Point customers.

12 Q. Who made the inquiries?

13 A. Who made the phone calls?

14 Q. Yes.

15 A. Pam Pater.

16 Q. Who drafted this document?

17 A. I did.

18 Q. And about when did you do that?

19 A. When -- I believe it was in
01:19 20 summer of 2012.

21 Q. Was there any particular
22 competitor that this document was used with
23 respect to?

24 A. Yes. It was in regards to the

Amy Finley, 4/21/2014

145

1 locations that had canceled to go to Context
2 Media.

3 Q. And specifically this document
4 is targeted at ACN practices, correct?

5 A. Correct.

6 Q. And those ACN practices who
7 cancel and switched to Context's RHN program,
8 right?

9 A. Correct.

01:20 10 Q. When approximately after the
11 drafting of this document did Ms. Pater begin
12 making the phone calls?

13 A. Oh, I would say probably within
14 a week or so after.

15 Q. Did anyone else have input into
16 the content of this document besides you?

17 A. Looks like someone else wrote on
18 this and so I don't recall if this was my --
19 mine or Pam's suggestion back.

01:20 20 Q. Are you referring to words that
21 are written in a slightly lighter or gray
22 font?

23 A. Right. Yes. That leads me to
24 believe there's -- someone else edited

Amy Finley, 4/21/2014

146

1 this -- this particular document but not
2 seeing everything around this, I -- I don't
3 recall who.

4 Q. I don't know. Do you remember
5 which part of this you drafted?

6 A. I would have probably been the
7 original person. I reported to Jill Brewer
8 at the time so maybe she had some input but
9 again not 100 percent confident.

01:21 10 Q. Is there anyone besides
11 Ms. Brewer or Ms. Pater who might have given
12 input on this document?

13 A. Not that I recall.

14 Q. Are you aware of a final version
15 of this document that's different from this
16 one?

17 A. There could be. I'm guessing
18 that I would have kept the suggestions that
19 were here. This was more of a sort of script
01:21 20 to like talking points. We don't necessarily
21 go off of a script or read verbatim.

22 Q. What were Ms. Pater's
23 instructions in contacting members of ACN's
24 network who had cancelled and started

Amy Finley, 4/21/2014

147

1 receiving Context Media's RHN network?

2 A. Her instructions were to just --
3 in that contact the location to see if they
4 were still interest -- or still satisfied
5 with their selection and if they could
6 mention -- you know, to find out if there was
7 any incentive that was involved she was able
8 to get that. That was basically what we were
9 looking for because we had discovered that
01:22 10 practices were actually being incented to
11 switch to Context Media.

12 Q. They were being given money? Is
13 that what incentive --

14 A. They were being given an
15 American Express -- a hundred dollar American
16 Express gift card.

17 Q. And that's what you mean by
18 incented?

19 A. Yes.

01:22 20 Q. Do you mean to suggest that the
21 practice may have -- that some practices may
22 have switched from ACN to RHN because of the
23 incentive that was provided?

24 A. Yes.

Amy Finley, 4/21/2014

148

1 Q. It's an important enough
2 incentive that you think it could influence
3 the decision that a practice makes
4 independently of all the other factors
5 involved?

6 A. Yes.

7 Q. How often do you think that
8 could possibly happen?

9 MR. BERNAY: Object to the form.

01:23 10 A. I believe as many times as it
11 was offered.

12 Q. If an incentive was offered then
13 your opinion would be that it was the reason
14 that the practice switched to RHN?

15 A. Yes.

16 Q. How were the results of this --
17 well, this document is a list of questions or
18 suggestions for a conversation. Was this
19 project implemented?

01:24 20 A. Yes.

21 Q. Was Ms. Pater the only one who
22 made the calls?

23 A. Yes.

24 Q. And what form did she record her

Amy Finley, 4/21/2014

149

1 results?

2 A. In the CMS database in her
3 comments.

4 Q. What field of CMS?

5 A. The actual comments field. I
6 don't believe these were tied to an order.
7 They were added to a spreadsheet. The
8 comment.

01:24

9 Q. Was the determination of whether
10 a gift card had been offered or received the
11 primary purpose of these follow-up
12 interviews?

13 A. Yes.

14 Q. Were there secondary purposes
15 that you were also trying to achieve?

01:25

16 A. Well, if we could gain any more
17 insight as to why they switched obviously
18 that would have been beneficial. Knowing
19 that these practices were not going to -- the
20 intent was not to get them to switch back
21 because to put a practice through a
22 de-install, reinstall, de-install, reinstall
23 would have been too much.

24 Q. Did Ms. Pater report on or

Amy Finley, 4/21/2014

150

1 summarize her results to anyone?

2 A. Again, the comments were put
3 into the spreadsheet and for me to review.

4 Q. A separate spreadsheet from CMS?

5 A. A separate spreadsheet from CMS,
6 yes.

7 Q. How often?

8 A. All of her calls that she
9 made -- I don't believe she made that many,
01:25 10 but her comment summary of that call was
11 added as a comment in the database and that
12 comment was copied over to the spreadsheet.

13 Q. How often? Just one spreadsheet
14 or did she work on --

15 A. Just one spreadsheet.

16 Q. About how long did it take her
17 to complete the calls she made?

18 A. I believe she was able to finish
19 up. I think it was only like a week or two
01:26 20 that she worked on that project.

21 Q. About how many calls did she
22 make?

23 A. I don't know the exact number.

24 Q. How long was the spreadsheet?

Amy Finley, 4/21/2014

151

1 A. It was added to our spreadsheet
2 of cancels but it -- I know it was not all of
3 them. It was, I don't know, maybe a third.

4 Q. All right.
5 (Exhibit 218 identified.)

6 Q. I've just handed you what we
7 have marked as Defendant's Exhibit 218. Is
8 this the spreadsheet of cancels that you were
9 referring to? Where were Ms. Pater's results
01:27 10 recorded in this spreadsheet?

11 A. Column M discussion feedback --

12 MR. BERNAY: Column?

13 THE WITNESS: M. I believe it's
14 M. Discussion feedback --

15 MR. HANKINSON: Look really
16 close at that M.

17 THE WITNESS: Oh, it's not M.
18 Oh, double A. Oh, I need to get classes.

19 MR. HANKINSON: No, not at all.

01:27 20 It's very small. So column --

21 A. Double A.

22 Q. Double A is the --

23 A. Discussion feedback.

24 Q. Was the intent to put all of

Amy Finley, 4/21/2014

152

1 Ms. Pater's result into this column?

2 A. Yes.

3 Q. Do you have any reason to
4 believe that there are any comments given by
5 practices to Ms. Pater that are not in here?

6 A. No.

7 Q. So if we count them up --

8 A. Yeah.

9 Q. -- we would know the number of
01:27 10 at least calls that Ms. Pater made where she
11 got some sort of information.

12 A. Correct.

13 Q. Regardless of the time when the
14 practice had originally canceled, Ms. Pater's
15 calls were all made as part of a sort of
16 separate standalone project within about a
17 two-week period in the summer of 2012?

18 A. Yes.

19 MR. BERNAY: I would just note
01:28 20 for the record that Exhibit 218 is one that
21 we've produced over objection as -- as a
22 spreadsheet that was prepared for counsel and
23 contains work product in that sense. Just
24 noting that for the record.

Amy Finley, 4/21/2014

153

1 MR. HANKINSON: Is there 100
2 percent overlap between the comments pasted
3 into column double A of the spreadsheet that
4 is Defendant's Exhibit 218 and Ms. Pater's
5 comments that were entered into CMS as she
6 conducted this research project?

7 MR. BERNAY: Object to the form.
8 You can answer.

9 A. As long as she didn't miss one
01:29 10 in manual error, yes, it should be 100
11 percent.

12 Q. How did Patient Point act on the
13 information that Ms. Pater was able to gather
14 if at all?

15 A. We did not act on this
16 information.

17 Q. Was there an intent to act on
18 the information when the project was
19 undertaken?

01:30 20 A. I think it was dependent upon
21 the results. We were really trying to see if
22 anybody would actually state that they were
23 given an incentive.

24 Q. You believed that the practice's

Amy Finley, 4/21/2014

154

1 representatives might be reticent to say that
2 they had been offered and had accepted a gift
3 card for switching?

4 A. We had -- I -- I -- I know and I
5 recall a practice being offended that -- that
6 they would have done something of the sort.
7 Being defensive I guess.

8 Q. So, if anything, you believed
9 that Ms. Pater's results would be
01:30 10 under-inclusive of the practices that
11 switched because of the incentive?

12 MR. BERNAY: Object to the form.

13 A. I -- I believe that she did
14 not -- she was not able to determine what we
15 were hoping that she would be able to
16 determine: Whether or not they were offered
17 an incentive.

18 Q. Did any practices confirm that
19 had they had been offered an incentive?

01:31 20 A. Not from her calls but we have
21 confirmation from other practices that they
22 had been.

23 Q. And your impression is that
24 there are additional ones who just were not

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Amy Finley, 4/21/2014

155

1 willing to say that they had accepted an --

2 A. Correct.

3 Q. -- incentive. And what is that
4 based on?

5 MR. BERNAY: Object to the form.

6 A. It's based on a comment that we
7 received from a vendor that was told that the
8 practice was switching due to an AMX gift
9 card that was provided to the office where we
01:32 10 did not -- the office manager did not state
11 that to us directly. She told our vendor.

12 Q. A deinstallation vendor?

13 A. Yes.

14 Q. How was that vendor's story
15 reported to you?

16 A. I believe that story was
17 provided via phone to either the relationship
18 manager -- actually I believe it was the
19 relationship manager. Could have been
01:32 20 somebody from our field service department
21 though too. One or the other that had access
22 to CMS and they put the comment in CMS.

23 Q. Do you remember who the
24 relationship manager was?

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Amy Finley, 4/21/2014

156

1 A. No.

2 Q. Were Ms. Pater's instructions to
3 record all the responses to her questions or
4 to focus on the incentives?

5 A. For every person that she calls
6 she has to put a comment into the database if
7 she reached out to them via phone so
8 regardless of the -- of what she found out
9 she was instructed to put -- enter a comment.

01:33 10 Q. Do you know if -- well, was she
11 instructed to record all the comments they
12 received about the sound that's available
13 through RHN's content loops?

14 A. So in reference --
15 MR. BERNAY: Object -- object to
16 the form.

17 A. In reference to this document,
18 again these are suggested questions for her
19 to ask and whatever she was able to gather
01:34 20 she would summarize into a comment.

21 Q. She was instructed to do that?

22 A. She was instructed to put into a
23 comment.

24 Q. But she was not instructed to

Amy Finley, 4/21/2014

157

1 necessarily hit all of these questions on
2 every call?

3 A. Correct.

4 Q. Did you ever have a conversation
5 with Ms. Pater about how she carried out her
6 instructions?

7 A. No. I don't believe. I mean --
8 what do you mean?

9 Q. I'm just picturing something
01:34 10 like after the fact where you might have
11 discussed with her, well, how many questions
12 did you typically ask or -- you know what I
13 mean? Like any kind of debrief?

14 A. My debrief went as far as were
15 you able to find anything out or anybody that
16 was not happy or anybody that was -- was
17 incensed that told you that. That was the
18 in -- I mean, that was pretty much the gist
19 of the debrief.

01:34 20 Q. The results of the project were
21 that Ms. Pater did not find anyone who was
22 unhappy with RHN, correct?

23 A. Correct.

24 Q. And further Ms. Pater was unable

Amy Finley, 4/21/2014

158

1 to confirm any practice saying that they had
2 switched because of a gift card?

3 A. Correct. Out of the calls that
4 she made.

5 Q. But that didn't surprise you
6 because you thought the practices would
7 hesitate to admit that.

8 A. I did -- I did believe there was
9 hesitation to admit that.

01:35 10 Q. It didn't cause you to change
11 your opinion that those incentives were
12 enough to cause a not insignificant number of
13 switches in and of themselves?

14 A. I still believed that -- that
15 the source of the switch was due to the
16 incentive not necessarily because of the
17 program.

18 Q. Looking at Defendant's
19 Exhibit 218, who is responsible for creating
01:36 20 this spreadsheet?

21 A. I initially started this
22 spreadsheet with the column headers and I
23 believe like the first two Chicago locations
24 and then Lori Smith maintained it from that

Amy Finley, 4/21/2014

159

1 point forward.

2 Q. How did you select the column
3 headers?

4 MR. BERNAY: Again, I want to
5 caution Ms. Finley not to reveal any of her
6 discussions with counsel and not -- not to
7 reveal any -- any thought processes or
8 anything that would veer over the line of
9 work product in relation to the document. We
01:37 10 still maintain it's privileged despite the
11 fact we have produced it again over
12 objection.

13 A. What's the question again?

14 Q. How did you select the column
15 headings?

16 A. Oh. Basically just kind of went
17 through what I felt would be necessary
18 information that I would want to look at in a
19 glance.

01:37 20 Q. Regarding cancellations of
21 Patient Point's systems in favor of Context
22 Media coming in as a competitor?

23 A. Correct.

24 Q. Were those the instructions you

Amy Finley, 4/21/2014

160

1 gave to Lori Smith in preparing this?

2 A. Yes.

3 Q. Part of the project involved
4 tracking whether the equipment came back,
5 correct?

6 A. Correct.

7 Q. And another part of the project
8 involved collecting comments about the reason
9 for the cancellation, right?

01:38 10 A. Yes.

11 Q. And then subsequently
12 Ms. Pater's comments were put in column AA?

13 A. Correct.

14 Q. What are the comments in Z that
15 are in the red here mostly?

16 A. These were comments that were
17 highlighted and this was for counsel to --

18 MR. BERNAY: I would instruct
19 you not to say anything more than that.

01:39 20 THE WITNESS: Okay.

21 MR. HANKINSON: The comments in
22 Z taken -- they're excerpts from other
23 comments.

24 A. Correct.

Amy Finley, 4/21/2014

161

1 Q. Was it your intent in creating
2 this document and assigning to Lori Smith the
3 ongoing project to provide the best
4 information that you could or, excuse me, to
5 gather the best information that you could
6 about cancelations of practices who were
7 switching to Context Media?

8 A. I was instructed to create this
9 spreadsheet by my boss at the time Jill
01:39 10 Brewer. From there, again, selected the
11 appropriate fields that I felt was -- we felt
12 was necessary to maintain in the spreadsheet.

13 Q. Was it your goal to provide
14 complete information about reasons for
15 switches?

16 MR. BERNAY: Object to the form.

17 A. This was more for tracking
18 equipment in locations that Context Media
19 removed our equipment.

01:40 20 Q. On the seventh row in the
21 comment summary the first sentence says Josh
22 called in explained HAN is currently in
23 litigation with RHN.

24 A. Correct.

Amy Finley, 4/21/2014

162

1 Q. That comment was made by Heather
2 McGauvran, right?

3 A. Yes.

4 Q. Did you have an understanding of
5 whether HAN was in litigation with RHN at the
6 time that comment was made?

01:41

7 MR. BERNAY: I -- I just want to
8 note again for expediency purposes that this
9 comment was produced previously. I said I --
10 you know, if there -- if there's new
11 information contained in these documents that
12 I don't object to you asking her about it but
13 this was a comment that I believe may have
14 been asked about as part of an e-mail even in
15 an earlier deposition. So again for
16 expediency purposes I'm going to instruct
17 Ms. Finley not to answer.

01:42

18 MR. HANKINSON: It's a big
19 project for me to know what's in here that
20 would be new versus what's in here that's not
21 new and I'm not trying to create work. I'm
22 just saying like I've got my questions --

23 MR. BERNAY: Uh-huh.

24 MR. HANKINSON: -- I want to be

Amy Finley, 4/21/2014

163

1 expedient too.

2 MR. BERNAY: Right.

3 MR. HANKINSON: This one I'll
4 let go but that instruction I disagree with
5 and I kind of want to figure out a way that
6 we can get through today real nicely.

7 MR. BERNAY: Understood.

8 Understood. I -- you know, I take particular
9 exception to this one because I believe --

01:42 10 again I've been through a lot of these --

11 MR. HANKINSON: Skip this one.

12 MR. BERNAY: Sure.

13 MR. HANKINSON: Moving forward
14 let me just try to be expedient --

15 MR. BERNAY: Okay.

16 MR. HANKINSON: -- and then --

17 MR. BERNAY: And I've let you --

18 I think there -- there's been previous
19 questions which could have easily been asked

01:42 20 in prior depositions. I've let that go. I'm

21 not -- I'm not gonna hold you to only the

22 text of the document and only what hadn't

23 been produced before but I'm just -- again, I

24 think this one was actually an exhibit in an

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Amy Finley, 4/21/2014

164

1 earlier deposition. That's all.

2 MR. HANKINSON: That e-mail that
3 you're referring to?

4 MR. BERNAY: Yeah. I believe
5 so. I -- again, I've been through a lot of
6 these so --

7 MR. HANKINSON: Yeah and it's
8 just hard --

9 MR. BERNAY: I don't disagree
01:43 10 with you, Tom, on that one.

11 MR. HANKINSON: All right.

12 THE WITNESS: Am I allowed to
13 say I believe so too?

14 MR. HANKINSON: Yeah.

15 THE WITNESS: Because I do
16 believe -- I do recall discussing that.
17 Yeah.

18 MR. BERNAY: I believe you were
19 asked about that. Yeah.

01:43 20 MR. HANKINSON: Fair enough.
21 Looking at row six in column double A
22 Ms. Pater reports from her ACN follow-up
23 interviews that the representative of the
24 practice is happy with Context Media's

Amy Finley, 4/21/2014

165

1 program and the sound is okay, correct?

2 A. Yes.

3 Q. Ms. Pater was conducting that
4 interview process in the course of her duties
5 for Patient Point, right?

6 A. Yes.

7 Q. At your instruction?

8 A. Yes.

9 Q. And your answer would be the
01:44 10 same if I asked that question as to any
11 comment in column double A, correct?

12 A. Yes.

13 Q. The next row down, row seven,
14 Ms. Pater reports that the practice
15 representative said that they are happy with
16 the new system, they think their patients are
17 benefiting, correct?

18 A. Correct.

19 Q. Looking down in row eight,
01:44 20 Ms. Pater reported as part of her ACN
21 follow-up interviews that the practice
22 representatives were very happy with the new
23 program, they have had no service issues,
24 that the female patients especially like the

Amy Finley, 4/21/2014

166

1 programing. They like the recipes and the
2 sound and that it's more entertaining.

3 Correct?

4 A. That's what it states. Yes.

5 Q. Do you believe that even though
6 Mrs. Pater was primarily focused on finding
7 out about incentives that she was

8 nevertheless trying to be truthful and
9 complete in reporting summaries of her

01:45 10 conversations with the practices in column
11 double A?

12 A. Yes, I believe she was being
13 truthful.

14 Q. And also complete as to whatever
15 questions she managed to get answers to,
16 right?

17 A. Yes. And complete to whatever
18 she was able to discuss.

01:45 19 Q. In column 27 or, excuse me, row
20 27, it's at the top of the page, in column
21 double A, Ms. Pater reported that the
22 practice representative Mila feels the older
23 patients are more attracted to the sound
24 program than to reading the intro off the

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Amy Finley, 4/21/2014

167

1 screen. Do you see that?

2 A. Yes.

3 Q. Has it come to your attention in
4 following up about comparisons between RHN's
5 content and Patient Point's content that
6 rheumatology is an area where just
7 demographically the patients are more likely
8 to be a little bit older?

9 A. You could -- could say that.

01:46 10 Q. You've seen comments indicating
11 that patients in rheumatology offices have a
12 little more trouble reading words off a
13 screen as opposed to hearing dialog with
14 sound that's played at a -- at a audible
15 volume?

16 A. I've heard both. I've even
17 heard the sound -- they can't always hear the
18 sound either depending on the patient. So I
19 think it goes sort of both ways. And the
01:47 20 font that is used on our screen is pretty
21 visible.

22 Q. But there have --

23 A. Larger font with that -- knowing
24 that, you could have a variety of -- I don't

Amy Finley, 4/21/2014

168

1 know what the right word is -- variety of
2 different ages and age spectrum in the
3 office.

4 Q. Is the font in ACN larger than
5 the font in primary care network for that
6 reason?

7 A. That I don't know. I can't
8 speak to that.

01:47

9 Q. Are you aware of any feedback
10 about the lack of sound in the ACN program
11 related to older patients being given to the
12 research department?

13 A. Being given to our research
14 department?

15 Q. Maybe that's a bad question.

16 A. No. No.

17 Q. Being given to the department --

18 A. Maybe the creative --

19 Q. -- that created --

01:48

20 A. -- department? The creative
21 department. I'm sure if they received
22 comments like that they would be shared to
23 our creative department.

24 Q. And are you aware of any changes

Amy Finley, 4/21/2014

169

1 in Patient Point's content that were made
2 because of such comments?

3 A. I know that we have made changes
4 to content. I can't say that it was in
5 respect to those comments or how those
6 changes were developed.

7 Q. Were Ms. Pater's comments shared
8 with anyone outside of the relationship
9 management team?

01:48 10 A. I don't recall if I circulated
11 her comments or not.

12 Q. You may have or you may not
13 have?

14 A. Correct.

15 Q. If you could look at row 38. In
16 the course of her ACM follow-up interviews
17 Ms. Pater reported that the Arthritis and
18 Pain Associates Practice, number 3433172
19 stated again to her that the switch was due
01:49 20 to content, correct?

21 A. Yes. That's what it states.

22 Q. If you could look at row 55,
23 this concerns a switch from a primary care
24 network location, correct?

Amy Finley, 4/21/2014

170

1 A. In row 55, yes.

2 Q. Dr. David Leonard was the
3 primary care physician?

4 A. Yes.

5 Q. And the comment field states
6 that the doctor decided to change the program
7 because the new program is specifically for
8 diabetes, right?

9 A. Yes.

01:50 10 Q. Have you seen other comments
11 like that in the course of your work --

12 A. Yes.

13 Q. -- about diabetes?

14 A. Yes.

15 Q. Does Patient Point have a
16 network that is geared specifically toward
17 offices that primarily deal with patients who
18 have diabetes or related illnesses?

01:50 19 A. They did at one time and then
20 those -- that program was merged into the
21 primary care network.

22 Q. Do you know about when that
23 happened?

24 A. That would pro -- that was --

Amy Finley, 4/21/2014

171

1 I'm gonna say like early 2005, four. I mean,
2 a long time ago.

3 Q. So at the time that Context
4 Media got on your radar as a competitor, that
5 switch had happened long in the past?

6 A. It happened prior to that, yes.

01:51

7 Q. So if I was a doctor who had
8 Patient Point's diabetes focused program
9 originally and was I still a subscriber
10 whenever that switch happened, approximately
11 2005, my content would have changed from that
12 focus to a primary care focus, right?

13 A. To a primary care focus but
14 there was diabetes content still in the
15 primary and still is today in that primary
16 care network.

01:52

17 Q. If you could look at row 63, the
18 comment as to location 3747002 Doctors Akther
19 and Purushotham indicates that the practice
20 contact explained that Patient Point's
21 program is very boring and they have patients
22 who visit the office for multiple times in
23 one week for infusions and treatments. Did I
24 read that correctly?

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Amy Finley, 4/21/2014

172

1 A. That's what it states. Yes.

2 Q. And it states that the practice
3 contact indicated that Context's programming
4 was more engaging, kept the patients
5 interested throughout their visit, and the
6 contact specifically mentioned video recipes
7 and segments with sound, correct?

8 A. That's what it states.

01:53

9 Q. And then it states, she was very
10 adamant that our programing was boring and
11 not very educational, right?

12 A. Again, yes, that's what it
13 states.

14 Q. It's fairly common in the
15 comment fields to find that a practice that
16 switched to Context Media liked that RHN was
17 focused on rheumatology or that DHN was
18 focused on diabetes. Is that fair to say?

19 MR. BERNAY: Object to form.

01:54

20 A. The comments that were -- are
21 stated or put in here are basically what the
22 practice had stated to us. I'm not sure I
23 under -- our content for rheumatology is
24 focused on rheumatology. The primary care,

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Amy Finley, 4/21/2014

173

1 yes, there's diabetes segments in there so it
2 would be fair to say that Context Media may
3 have more diabetes segments than us but I
4 don't even know that for a fact because I
5 have not seen their loop compared to our --
6 their diabetes loop compared to our primary
7 care loop.

8 Q. But the practices on this list
9 report that that's the case.

01:54 10 A. That's what they believe, yes.

11 Q. In row 74 the comment field for
12 a practice 3655964 the North Dayton
13 Rheumatology indicates, among other things,
14 that the contact is not sure if an incentive
15 was offered and does not think that RHN
16 mislead or pretended to be HAN at any point.
17 Do you see that?

18 A. Yes.

01:55 19 Q. Were -- was Lori Smith the
20 person who was fielding most of the calls
21 when Context Media was identified as the
22 competitor at issue?

23 A. Yes, she was.

24 Q. Were part of her instructions to

Amy Finley, 4/21/2014

174

1 ask about whether Context Media was posing or
2 misleading that they were affiliated with
3 HAN?

4 A. Again, I believe I covered all
5 this in my last deposition but, yes, part of
6 her instructions at one point were to ask
7 that. When we heard a practice tell us that
8 they felt they were -- that they were
9 misrepresented -- another company, Context
01:56 10 Media, had misrepresented us by stating that
11 they had permission to remove our equipment,
12 when we found out that that was happening, we
13 wanted to make sure that when we learned of
14 another location removing equipment, if that
15 was the case in their situation as well.

16 Q. And I don't want to take up a
17 lot of time. I just -- if Ms. Smith found
18 that out you -- her instructions were that it
19 would be in her comments, right?

01:56 20 A. It would be in her comments.

21 Q. So if I'm looking at this
22 spreadsheet and some of them say they did not
23 mislead and others are silent as to whether
24 they misled or not, I can't assume that the

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Amy Finley, 4/21/2014

175

1 others were misled. She would have stated it
2 affirmatively if they told her that, right?

3 MR. BERNAY: Objection.

4 Q. According to her instructions.

5 MR. BERNAY: Same objection.

6 You can answer.

7 A. Again, this is a manual entry.

8 I can't state that she put verbatim

9 everything that she was told. She should.

01:57 10 It would be -- you know, she should put that
11 in her comments for obvious reasons. It's --
12 you know, it's something that we would want
13 to know but I can't say, oh, yeah, 100
14 percent of the time she did that because
15 everybody makes mistakes.

16 Q. And that's why column double A
17 stops eventually is because that ACM followup
18 happened at a particular time in the summer
19 of 2012 so the comments that were added to
01:59 20 the spreadsheet after that would not have
21 anything in column double A.

22 A. Right. And she didn't even call
23 every single practice so --

24 MR. HANKINSON: I'd like to mark

Amy Finley, 4/21/2014

176

1 this as 219.

2 (Exhibit 219 identified.)

3 Q. Do you recognize what's been
4 marked as Defendant's 219?

5 A. This appears to be a counsel
6 request.

7 MR. BERNAY: Huh?

8 Q. The date of this request is
9 September 8th, 2012?

02:00 10 A. That's what it states.

11 Q. And the offices is Rheumatology
12 Associates in Bettendorf, Louisiana, correct?

13 A. Yes.

14 Q. It's signed by the office
15 manager Nancy Brimeyer?

16 A. Yes.

17 Q. Do you know whose notes appear
18 in handwriting on the right margin?

19 A. That's my handwriting.

02:01 20 Q. Your note of October 7th does
21 that reflect the date on which you spoke to
22 the office manager?

23 A. I don't recall what that date
24 is.

Amy Finley, 4/21/2014

177

1 Q. Do you have a common practice
2 when you take notes about calls with
3 canceling practices?

4 A. No, I don't. I don't typically
5 deal with the practices on a day-to-day
6 basis. Looking at this, you know, October
7 7th, 8 a.m., tells me maybe it was an
8 appointment of some time -- of some type.
9 Considering the timeframe from the letter and
02:01 10 that I would probably conclude that that was
11 the date of de-installing the equipment.

12 Q. And then the word content
13 underneath there, does that refer to the
14 reason for the cancel?

15 A. That could be the -- yes.

16 Q. Would that be your best
17 understanding of your own notes?

18 A. Yes.

19 MR. HANKINSON: I'd like to mark
02:02 20 Exhibit 220.

21 (Exhibit 220 identified.)

22 Q. Ms. Finley, do you know what
23 Defendant's Exhibit 220 is?

24 A. Yes.

Amy Finley, 4/21/2014

178

1 Q. What is it?

2 A. It's a churn report.

3 Q. Are these reports made in the
4 course of Patient Point's business?

5 A. I create this report.

6 Q. How often?

7 A. Once a quarter.

8 Q. How do you create it?

9 A. I pull the data from the

02:03 10 database using the cancel reason codes.

11 Q. Do you do that yourself or with
12 someone from IT?

13 A. I do that myself actually.

14 Q. And by database you mean CMS?

15 A. Correct.

16 Q. So these are reports that
17 utilize the reason codes that you enter with
18 every cancellation at least since the time
19 you made that mandatory.

02:03 20 A. Yes.

21 Q. And before that it was your best
22 effort to --

23 A. Sure.

24 Q. -- record those reason codes?

Amy Finley, 4/21/2014

179

1 A. The reason code for cancel was
2 always entered. The competitor name was what
3 was not always 100 percent. That wasn't
4 the -- the cancel reason code was always
5 mandatory. I'm sorry if I didn't make that
6 clear before. Cancel reason code was always
7 mandatory. It was the competitor name that
8 wasn't always mandatory.

02:04 9 Q. That was not my understanding
10 before but that's --

11 A. Sorry.

12 Q. -- that's what it is?

13 A. That is what it is, yes.

14 Q. Okay.

15 A. The can -- when you cancel a
16 location you have to give the reason.

17 Q. And that's always been the --

18 A. That's always been the case.

19 Q. -- case at least since 2009?

02:04 20 A. Correct.

21 Q. For what quarter was this churn
22 report created?

23 A. This is for the entire year of
24 2013.

Amy Finley, 4/21/2014

180

1 Q. Was it the one that you made for
2 the fourth quarter?

3 A. This would have been the end of
4 the year, yes. I tried to run them
5 quarter -- I tried to be religious about
6 running them each quarter.

7 Q. Who are they distributed to?

8 A. I would pass then on to
9 executive team members.

02:05 10 MR. BERNAY: I do want to state
11 she's testified about the previous churn
12 reports in 2000 -- from 2011, 2012 so this --
13 these kind of general questioning has already
14 been asked on the record. If you have
15 questions specific to the 2013 document, I
16 would -- I would ask them.

17 MR. HANKINSON: Who did you send
18 this one to?

19 A. I -- who did I send this one to.
02:05 20 I sent this to my boss Kimberly Theiss. I
21 also believe I sent this to Greg Robinson,
22 and Chris Martini.

23 Q. What is the expected churn of
24 30 percent in ACN come from?

Amy Finley, 4/21/2014

181

1 A. Reviewing the -- reviewing the
2 previous year's report and just kind of
3 estimating on top of that what we anticipate
4 could be the churn.

5 Q. It's not a -- the 30 percent is
6 not an exact report of a statistic from the
7 database.

8 A. No.

9 Q. It's a projection?

02:06 10 A. Yes.

11 Q. And are you responsible for
12 making this 30 percent projection?

13 A. I am.

14 Q. And the same for all the
15 expected churn numbers in this document?

16 A. Yes.

17 Q. The other one?

18 A. Yes.

02:06 19 Q. When was the 30 percent ACN and
20 12 percent PCN expected churn picked by you
21 that then ended up in this report?

22 A. It would have been in
23 January 2013 -- January/February of 2013.
24 That timeframe.

Amy Finley, 4/21/2014

182

1 Q. And actual churn for 2013 ended
2 up to be lower than that?

3 A. Correct.

4 Q. The comparison of 2011 to 2012
5 that included in the same report made in the
6 fourth quarter of 2013?

7 A. Yes.

02:07

8 Q. Is there usually sort of a
9 backward looking report that's at the same
10 time?

11 A. This was actually an error on
12 the top header. If it's in the header field,
13 it's not viewable unless it's printed so I
14 did not update that top information. As you
15 can see, 12 months 2013, 12 months 2012,
16 that's really what you're comparing here.
17 Actually just realized that recently that I
18 never updated that header because you don't
19 see it when you look on it electronically.

02:08

20 You only see it when you print it.

21 Q. Is this spit out by CMS or some
22 program in between?

23 A. This is an Excel document.

24 Q. What year are the notes in the

Amy Finley, 4/21/2014

183

1 status comments column applicable to?

2 A. 2013.

3 Q. So in -- if I'm reading this
4 correctly, in 2013, 96 practice locations
5 switched from Patient Point's waiting room
6 network system to a television to the best of
7 Patient Point's information?

8 A. Correct. But I'd also like to
9 note that this is all of our WRN programs not
10 just primary care and arthritis care.

11 Q. Do you have a regular report
12 that breaks it down by waiting room network?

13 A. The -- you mean by each
14 individual program?

15 Q. Uh-huh.

16 A. I could run that report but do I
17 run that typically? No.

18 Q. PWR is --

19 A. Practice wire.

20 Q. Is that like brochures? No.
21 That's the back office one, right?

22 A. Yes.

23 Q. What is the note health system
24 acquisitions mean on HAN 006137?

Amy Finley, 4/21/2014

184

1 A. Health system acquisitions
2 refers to large health systems, for instance,
3 like in Cincinnati Catholic Health Partners
4 buying up more hospitals and physician
5 offices under their ownership.

6 Q. And there's a reason code for
7 new management.

8 A. Correct.

02:11

9 Q. So when there's a large scale
10 acquisitions that would potentially affect
11 the level of churn for practices that were
12 within that acquisition.

13 A. Yes. So with -- yes. Health
14 care systems was the reason -- main reason
15 for new management. Practices switching
16 because of new ownership.

17 Q. That comment is your attempt to
18 add some color to the numbers?

19 A. Correct.

02:11

20 Q. Was does the comment offices
21 closing doors mean?

22 A. Offices permanently closed.
23 Those offices closing their doors, so offices
24 actually closing their practice.

Amy Finley, 4/21/2014

185

1 Q. That one doesn't really explain
2 anything new it's just an explanation --

3 A. Right.

4 Q. -- of that code.

5 A. Right.

6 Q. Did your expected churn for 2013
7 include churn that you expected due to
8 competitors practices that you believe are
9 part of this lawsuit?

02:12 10 MR. BERNAY: Object to the form.
11 You can answer.

12 A. My expected churn number for
13 rheumatology was anticipating the removal of
14 our equipment by Context Media without our
15 knowledge.

16 Q. Why do you think that that
17 impacts churn?

18 MR. BERNAY: Object to the form.

02:13 19 A. Oh. Well, because they take
20 down our equipment without us knowing it, we
21 don't have a -- we don't have time or a
22 chance to actually convince the practice
23 otherwise because the equipment's already
24 down and off the wall and their equipment is

Amy Finley, 4/21/2014

186

1 up.

2 Q. You're referring to saves?

3 A. Yes.

4 Q. Do you have any reason that you
5 believe that the save rate for practices that
6 switch to Context Media would be any better
7 than the save rate for practices that switch
8 to another competitor or to television if the
9 same period of time was given to Patient
02:14 10 Point to make the save?

11 MR. BERNAY: Object to the form.

12 A. I believe that if the practice
13 had time -- that we had more time to talk to
14 the practice to make sure that they
15 understand. Because a lot of times office
16 managers change so the person that we
17 originally sold our program into may not be
18 fully aware of everything that's available on
19 the program or the content that's even on the
02:14 20 program unless they sat in the waiting room
21 and watched it which is very unlikely for a
22 practice manager to do. So for us not to be
23 able to have the chance to explain to them
24 what they already have, yes, I do believe

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Amy Finley, 4/21/2014

187

1 that, you know, if we had more time to do
2 that we could have saved more practices.
3 It's hard to -- to do that and explain to
4 them what they have when it's already been
5 removed off the wall.

6 Q. There's a certain amount of
7 churn no matter what the competitors are
8 doing, right?

9 A. There's always expected churn.

02:15 10 Q. And then what you're describing
11 is your view that part of this 30 percent is
12 you've added some component of this
13 30 percent for the anticipation that Context
14 Media is going to switch out the equipment
15 without waiting the 30 or the 60 days, right?

16 A. Right.

17 Q. How much of that expected churn
18 is that versus --

19 A. I --

02:15 20 Q. -- other?

21 MR. BERNAY: Objection. You can
22 answer.

23 A. I don't know. I -- I -- I don't
24 know.

Amy Finley, 4/21/2014

188

1 Q. You can't say what this number
2 would be absent the Context Media switch out
3 practice that you're describing?

4 MR. BERNAY: Same objection.
5 You can answer.

6 A. I can't -- no, I can't. I
7 can't -- especially right here right now
8 trying to think in my head what was our churn
9 rate the year before. What wasn't factored.
02:16 10 What -- was it increased at a certain point
11 towards the end of the year. And you can't
12 get that from these others because this is
13 all the WRN together and not just one
14 particular program.

15 Q. It's frustrating and I don't
16 mean to hammer on it. I just -- you're
17 telling me that a part of this number is due
18 specifically to how you say Context Media
19 takes equipment off of walls and the timing
02:16 20 of it but you can't tell me what part of this
21 number.

22 MR. BERNAY: Object to the form.
23 Asked and answered.

24 A. I don't know -- so for the --

Amy Finley, 4/21/2014

189

02:17

1 for instance, when Context Media was going at
2 the rate that they were with removing
3 equipment off the wall, if they would have
4 continued at that rate without us trying to
5 put a stop to it and having them follow the
6 proper protocol, we could have continued at a
7 higher rate and that's what this number was
8 anticipating. I don't recall what the number
9 was for 2012 to say did I look at this and
10 say, okay, was it the last six months of the
11 year that I analyzed and said, okay, based on
12 that it's gonna continue that, I'm gonna add
13 ten percent. I -- I don't know. I'd have to
14 go back and kind of look at everything again
15 and figure out where I came up with that
16 number exactly but -- you know. So that's as
17 much information right now that I can give
18 you.

02:17

19 Q. Ms. Lawrence testified, if I'm
20 remembering correctly -- and I'm just using
21 this as an example -- that she thought that
22 of the practices that she received
23 cancellations from --

24 A. Uh-huh.

Amy Finley, 4/21/2014

190

1 Q. -- she probably only then would
2 be able to save, would be able to cancel the
3 cancel, in about one of ten, sometimes up to
4 two of ten, times.

5 A. Okay.

6 Q. Now, you've said you don't know
7 what that rate is normally. Is that correct?

8 A. I don't handle every cancel
9 request that comes in.

02:18 10 Q. Right.

11 A. And nor does she.

12 Q. Right. But there's a certain
13 number of cancellations that then get
14 cancelled, that get saved, right?

15 A. Uh-huh.

16 Q. And that number -- you know, in
17 theory there would be saves, you know, and
18 then it's out of a total number of cancel
19 orders and that would be the save rate,
02:18 20 correct?

21 A. Sounds -- that calculation seems
22 right.

23 Q. And that's not 100 percent.
24 It's nowhere near 100 percent, right?

Amy Finley, 4/21/2014

191

1 MR. BERNAY: Object to the form.

2 A. I -- I don't understand what
3 you're --

4 Q. You don't save every cancel
5 order.

6 A. No, we don't save every cancel
7 order.

8 Q. Or nearly every cancel order.

9 A. We do not save every cancel

02:19 10 order. No.

11 Q. And that's -- so let's take out
12 Context Media and say all other
13 competitors --

14 A. Uh-huh.

15 Q. -- and television which you
16 include as a competitor, right?

17 A. Correct.

18 Q. There's a certain save rate that
19 would be a component of churn, right?

02:19 20 A. There would be a certain save
21 rate. I don't look at the save rate. I
22 guess that's where -- I have not looked at
23 that, so I'm sorry that I don't have those
24 answers.

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192

1 Q. I'm not looking for apology or
2 even judging any of your work. It's just I
3 have new questions here today. You know --

4 A. No.

5 Q. -- what I mean.

6 A. I understand.

7 Q. So there's a save rate that
8 would be essentially normal or at least it
9 would be aggregated across all other
02:19 10 competitors other than Context and you're
11 saying that because of the timing of Context
12 taking equipment off of walls, that save
13 rate --

14 A. Uh-huh.

15 Q. -- is going lower, right?

16 A. That save rate is lowering, yes.

17 Q. If that save rate, let's say, is
18 only one out of every five -- like let's say
19 when a practice cancels -- you know, when
02:20 20 five practices cancel, excluding Context,
21 only one out of those five is gonna get
22 saved. Make that assumption. Then if that
23 save rate decreases from there to one out of
24 ten --

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Amy Finley, 4/21/2014

193

1 A. Uh-huh.

2 Q. -- it's not like that timing,
3 you know, lets you save everybody, right?

4 MR. BERNAY: Object to the form.
5 Object to the hypothetical nature of the
6 question. You can answer.

02:21

7 A. Well, here's the thing too --
8 and just as you're talking about this more,
9 the other piece of this, making me think this
10 is -- where this is coming from as far as
11 them removing the equipment and the timing,
12 the other aspect of this is the fact that
13 when Context was making it easy for the
14 practice and they didn't have to do anything,
15 they didn't have to call us to tell us that
16 they wanted to cancel, they just basically
17 let Context handle everything and thought
18 they had permission to handle everything,
19 then it took the burden off of the practice
20 which I also believe played a factor into the
21 fact of why they wanted to switch, so
22 therefore if now by following the proper
23 protocol that slows that process down because
24 now you're actually asking the practice to

02:21

Amy Finley, 4/21/2014

194

1 call us and tell us that they not longer want
2 the program. We had practices say I like
3 your programing, I'm happy with your
4 programming but we're gonna try something
5 different. That's why we switched. Well,
6 again, because the prac -- the decision was
7 already made and it was made easy for them
8 that, I believe, also im -- or had a factor
9 into why things were happening, churn was
02:22 10 happening faster and higher because, one --
11 it all just boiled down to the fact that they
12 were taking the equipment down and it would
13 show up on our doorstep. So the practice
14 didn't have to do anything. We didn't have a
15 time to even call -- a chance to even call
16 them to try to convince them to stay. It
17 just happened.

18 Q. But it's not that the -- the
19 save rate would become 100 percent if Context
02:22 20 suddenly --

21 A. No, it would not --

22 Q. -- gave 30 or 6 --

23 A. -- be 100 percent.

24 Q. It would probably be in line

Amy Finley, 4/21/2014

195

1 with the rest of the save rate for all
2 competitors and television, right?

3 A. It -- I would believe it to be,
4 yes.

5 Q. So when you're calculating this
6 30 percent churn rate, it's not that the 74
7 locations that switched to Context Media --
8 now, I know that's for all networks. But I
9 mean it's gonna be only PCN and A CN, right?

02:22 10 A. Yes.

11 Q. So 74 locations switch to
12 Context Media, you're not saying that you
13 expected that churn to be, you know, 74
14 instead of zero because of a delay. The save
15 rate for all competitors and television would
16 only be something like one out of ten or one
17 out of five.

18 MR. BERNAY: Object to the form.

19 A. Okay.

02:23 20 Q. So if you're talking about 74
21 practices in one year, we're only talking
22 about maybe seven practices that would be
23 saved if the 30 to 60 days were allowed?

24 MR. BERNAY: I think she's asked

Amy Finley, 4/21/2014

196

1 and answered the -- you've asked and she's
2 answered this question about ten times
3 already.

4 A. I -- I don't really understand
5 what you're asking me. Again, I'm not a math
6 person, so asking me figure out percentages
7 and numbers and all that, it's not my strong
8 suit so I'm sorry I'm not following with you
9 directly. Trying to do my best.

02:24 10 Q. I'm not a math person either so
11 it's probably my fault too.

12 A. But I'm trying to -- I mean, I
13 do get what you're saying. Yes, I do think
14 that if the proper protocol was followed --
15 of course we're not going to save every
16 practice. It's not gonna happen.

17 Q. You would expect the save rate
18 to be in line with the rest of the
19 competitors and television?

02:24 20 MR. BERNAY: Objection. Asked
21 and answered. You can answer one more time.

22 A. I would expect it to be lower,
23 yes.

24 MR. BERNAY: Why don't we take a

Amy Finley, 4/21/2014

197

1 short break?

2 THE WITNESS: Yeah. My foot's
3 falling asleep. Sorry.

4 VIDEOGRAPHER: We're off the
5 record.

6 (Break taken.)

7 VIDEOGRAPHER: We're on the
8 record with DVD number three.

9 (Exhibit 221 identified.)

02:34 10 MR. HANKINSON: Ms. Finley, I'd
11 like to direct your attention to what's been
12 marked as Defendant's Exhibit 221 and this
13 also bears a footer that says HAN 002706. Do
14 you see that?

15 A. Yes.

16 Q. Are you familiar with HAN 002706
17 as one of the spreadsheets that was produced
18 in this litigation by Patient Point's counsel
19 that lists certain comments from CMS?

02:35 20 A. Yes.

21 Q. And this particular one, 2706
22 that's now Defendant's Exhibit 221, was
23 produced relatively early in the litigation,
24 correct?

Amy Finley, 4/21/2014

198

1 A. Yes.

2 Q. Are you familiar with the intent
3 of Defendant's Exhibit 221 to list practices
4 that switched to Context Media from Patient
5 Point?

6 A. Yes.

7 Q. Please flip to page four of 66
8 and look at the comments listed for 3001256
9 Dr. David Leonard.

02:36 10 A. Okay.

11 Q. If you could read the third
12 comment in the comment fields column?

13 A. The one that starts out with per
14 Rob?

15 Q. Yes.

16 A. Well, there's two actually.
17 Second one that starts off with per Rob.

18 Q. Uh-huh.

02:36 19 MR. BERNAY: You're asking her
20 about the longer per Rob comment?

21 MR. HANKINSON: Yes.

22 MR. BERNAY: Okay.

23 A. Okay.

24 MR. HANKINSON: Rob's the name

Amy Finley, 4/21/2014

199

1 of the practice contact, correct?

2 A. I believe so.

3 Q. That would be the context of
4 this comment, right?

5 A. Yes.

6 Q. And --

7 A. Oh, wait. No. No. See per
8 Rob. Per Rob, we also have a Rob employee
9 and based on what I'm -- per Rob, we just
02:37 10 received the -- we just received the
11 equipment from this office.

12 Q. And then it switches to the
13 office contact.

14 A. Then it switches to they field
15 this order to Heather and Kari which is on
16 the relationship management team. We have
17 received all major equipment back and is
18 gonna go into this --

19 Q. Then it says --

02:37 20 A. -- comment.

21 Q. -- office confirmed today.

22 A. Right. So which -- which leads
23 me to believe Kari spoke with the office
24 contact.

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Amy Finley, 4/21/2014

200

1 Q. Okay. And --

2 A. But it doesn't have the office
3 contact name.

4 Q. So the office contact of
5 Dr. David Leonard's office --

6 A. Right.

02:37

7 Q. -- indicated that they didn't
8 have issues with Patient Point's program but
9 the doctor decided to change because the new
10 program is specifically for diabetes, right?

11 A. That's what it states. Yes.

12 Q. That would be an example of what
13 we spoke about earlier in terms of comments
14 indicating that practices were switching to
15 DHN because it was specific to diabetes,
16 correct?

17 A. Correct.

02:38

18 Q. If you turn to the next page,
19 the top comment, the first three words are
20 during audit call. What is an audit call?

21 A. The audit calls -- so our field
22 service department when we send a third party
23 to go out to update brochure racks, they will
24 audit the vendor to make sure that they

Amy Finley, 4/21/2014

201

1 actually updated the brochure rack.

2 Q. So that's a visit to a practice?

3 A. The visit is. The audit call is
4 an actual call to follow up to make sure that
5 the visit took place.

6 Q. Thank you. If you could flip to
7 page eight of 66, the top comment has to do
8 with practice 3002620 Endocrine Associates of
9 South Jersey, correct?

02:39 10 A. Yes. Appears --

11 Q. And it summarizes a conversation
12 with Mary from Endocrine Associates?

13 A. Yes.

14 Q. In switching to Context Media,
15 Mary explained that the switch was made
16 because the new program deals only with
17 diabetes and our program is not specialized
18 for their office, right?

19 A. That's what it states. Yes.

02:39 20 Q. Is that another example?

21 A. Another example of?

22 Q. Of what we spoke about earlier
23 in terms a Patient Point's primary care
24 network not being as geared specifically to

Amy Finley, 4/21/2014

202

1 diabetes as Context's network as of at least
2 the time period after 2005 when Patient
3 Point's diabetes specific network was
4 converted into the primary care network?

5 A. Yes.

6 Q. I'd like to direct you to page
7 ten of 66. The third comment down. Does
8 that relate to practice 3297726 Internal
9 Medicine Clinic?

02:40 10 A. Okay. It says starting with
11 called site?

12 Q. Yes.

13 A. Okay.

14 Q. Does the practice representative
15 indicate to Patient Point that the switch was
16 made because the new program is more engaging
17 offering sound and a news ticker?

18 A. That -- yes. That's what it
19 states.

02:41 20 Q. Would this be an example of what
21 you referenced earlier that you wondered
22 whether some of the switches weren't due to
23 this patient education on Context's loop
24 specifically but might rather be related to

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203

1 the bells and whistles like sound and a news
2 ticker?

3 A. Yes.

4 Q. If you would look at the bottom
5 comment on this page, it ends in redacted.

6 A. It ends in -- oh, yes. Okay.

7 Q. Do you know what that is?

8 A. I do not know what that is.

9 Q. Do comments in CMS sometimes

02:41 10 reflect conversations with attorneys?

11 A. I don't recall. I don't know.

12 Q. Okay.

13 A. It's -- I don't know --

14 Q. I don't need to --

15 A. -- what that means.

16 Q. I don't need to you ask you
17 anymore. I just wanted to --

18 A. I don't know what that means.

19 Yeah.

02:42 20 Q. Okay. All right. Set that one
21 aside.

22 (Exhibit 222 identified.)

23 Q. Look at what's been marked as
24 Defendant's Exhibit 222. I will represent to

Amy Finley, 4/21/2014

204

1 you that this was produced as a file that had
2 the number HAN 005882. Would you mind
3 writing that at the bottom, HAN 005882?
4 Thank you. Sorry to impose.

5 A. That's okay.

6 Q. Are you aware that counsel for
7 Patient Point also tried to produce some
8 spreadsheets from CMS that have comments
9 about reasons given for switches to
10 competitors other than Context?

11 A. Yes.

12 Q. Are you aware that Defendant's
13 Exhibit 222 that was marked with HAN 005882
14 is one of those spreadsheets?

15 A. Yes.

16 Q. Was the intent in creating
17 the -- and this spreadsheet lists data taken
18 from CMS, correct?

19 A. Correct. This was just a data
20 pull.

21 Q. And the CMS data was entered
22 into CMS by Context -- or excuse me -- by
23 Patient Point employees, correct?

24 A. Yes. By Patient Point employee.

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Amy Finley, 4/21/2014

205

1 Q. They did that in the ordinary
2 course of their duties, correct?

3 A. Correct.

4 Q. And the CMS database including
5 all the information in this spreadsheet is
6 kept in Patient Point's ordinary course of
7 business, correct?

8 A. Correct.

02:44

9 Q. The comment fields are entered
10 by employees at or shortly after the time
11 that the conversations reflected in the
12 comments occurred, right?

13 A. Yes.

14 Q. Would you please look at -- I
15 hope these are in order, Aaron -- practice ID
16 3429893?

17 MR. BERNAY: 3429893?

18 MR. HANKINSON: Yeah. It is a
19 balance --

02:44

20 MR. BERNAY: Miguel Cima?

21 MR. HANKINSON: Yes.

22 A. I can't believe I found it.

23 Q. So there's quite a few. I'm
24 looking at the -- there's two at the bottom

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Amy Finley, 4/21/2014

206

1 of the page and then I'm looking at the full
2 page of Cima -- Miguel Cima comments --

3 A. Okay.

4 Q. -- at the bottom comment. Is
5 this a CMS entry related to practice 3429893
6 practice name Miguel A. Cima, MD?

7 A. This is the practice -- yes.

8 Q. And this comment has to do with
9 a practice that switched away from the ACN
02:45 10 network, correct?

11 A. Yes.

12 Q. The competitor to which that
13 practice switched was Health Monitor,
14 correct?

15 A. Correct.

16 Q. Lori Smith entered this CMS
17 information?

18 A. Yes.

19 Q. And she received that
02:45 20 information from Gloria Cima, correct?

21 A. Correct.

22 Q. I'll just go ahead and read the
23 comment quickly. Reassigning cancel order to
24 Amy F. That's you, correct?

Amy Finley, 4/21/2014

207

1 A. Yes.

2 Q. Health monitor removed our
3 equipment 7/9. Do you believe that to mean
4 July 9th?

5 A. Yes.

6 Q. After Heather specifically told
7 the office that another company was
8 misrepresenting themselves claiming that they
9 were authorized to remove our equipment. I
02:46 10 was able to -- is SW speak with?

11 A. Yes.

12 Q. I was able to speak with Gloria
13 once and she refused to call -- do you
14 believe Health Monitor is what is meant by
15 HM -- she refused to call Health Monitor to
16 find out what happened to our equipment.
17 I've been unable to get her on the phone
18 since. Notifying Vida that the monitor and
19 CPU for this office should be written off.

02:46 20 Did I read that correctly?

21 A. Yes.

22 Q. The specific notification from
23 Heather -- that would be Heather McGauvran,
24 right?

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Amy Finley, 4/21/2014

208

1 A. Yes.

2 Q. The specific notification that
3 another company was misrepresenting
4 themselves claiming they are authorized to
5 remove our equipment, do you know what that
6 refers to?

7 A. I -- I would believe that
8 would -- refers to Heather notifying of
9 this -- notifying them of this but --

02:47 10 Q. Do you think that that -- she
11 intended to notify them about a practice that
12 Heather thought Context Media was following
13 in the marketplace?

14 MR. BERNAY: Object to the form.

15 A. I don't believe that she was
16 stating a specific company. It's just the
17 fact that nobody else is allowed to remove
18 our equipment stating that fact and then
19 after the fact that they still removed the
02:47 20 equipment.

21 Q. Are you aware of any statements
22 to practices about a company being in the
23 marketplace misrepresenting themselves
24 claiming that they're authorized to remove

Amy Finley, 4/21/2014

209

1 our equipment other than the e-mail and fax
2 and any calls from the practices about the
3 e-mail and fax that related to Context Media
4 that we discussed earlier?

5 MR. BERNAY: Object to the form.

6 A. Those would be the primary
7 reasons for that conversation to take place.
8 It's not to say that there couldn't have been
9 a conversation where there was notification
02:48 10 that a practice was being can -- that was
11 canceling or that somebody got wind that that
12 was happening and they stated, oh, they're
13 going to remove it, you don't have to worry
14 about it, to where they were saying they
15 would reiterate that fact or bring up that
16 point from that e-mail/fax at that time.

17 Q. So we don't --

18 A. I would hope that they would
19 reiterate that fact.

02:48 20 Q. We don't know whether
21 Ms. McGauvran was telling this to the
22 practice because of that Context Media fax
23 and e-mail or whether it's some independent
24 reason that she's telling this to the

Amy Finley, 4/21/2014

210

1 practice, correct?

2 A. Yes. I don't -- I don't know if
3 this was in reference to the e-mail or if
4 this was just -- this is what we knew was
5 happening and she was stating that we know
6 this is happening and that is not true, only
7 Patient Point/Healthy Advice can remove the
8 programming.

02:49

9 Q. So what was known is that Health
10 Monitor had removed the equipment already,
11 right?

12 A. That's what it sounds like in
13 this -- what I'm seeing from here.

14 Q. Uh-huh. And then the comment
15 ends notifying Vida that the monitor and CPU
16 for this office should be written off, right?

17 A. Right.

18 Q. Written off mean -- sorry. You
19 were talking.

02:49

20 A. No. It's okay. I was just
21 gonna say that it looks -- it appears the
22 equipment is missing.

23 Q. And so written off means that
24 Patient Point is going to cease efforts to

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211

1 locate the equipment?

2 A. Yes.

3 (Exhibit 223 identified.)

4 Q. Please direct your attention to
5 what's been marked as Defendant's 223.

6 Please try to find practice number 3488738.

7 It's Board Certified Rheumatology. 348 --

8 A. 348 --

9 Q. -- 8738.

02:50 10 A. 348 -- 3488 --

11 Q. 738. The page begins with
12 Lesser then Goldman and then Board Certified
13 Rheumatology is the one I'm talking about.

14 A. 89. 88. Oh, okay. I'm sorry.
15 It was underneath the clip.

16 Q. Probably the page before that.

17 A. The page before this one?

18 MR. BERNAY: 738. There it is.

02:51 19 THE WITNESS: Says James -- oh,
20 okay. Down here.

21 MR. BERNAY: Yeah.

22 THE WITNESS: Okay.

23 MR. HANKINSON: If you could
24 turn your attention to the bottom comment,

Amy Finley, 4/21/2014

212

1 this comment relates to a practice -- oh,
2 excuse me. I should have started -- keep --
3 Keep that. Don't lose that for goodness
4 sake. Here, you want to put that on it?

5 A. That would be great. Thank you.

6 Q. Thank you. Defendant's
7 Exhibit 223 was produced with a number. It
8 was HAN 00 I believe it's 6 -- yeah -- 6145.
9 Would you write that, HAN 006145?

02:52 10 A. HAN 00 --

11 Q. 6145. Are you aware of a
12 attempted final update of the spreadsheet of
13 data from CMS that gives the database's
14 information about practices that switched
15 from Patient Point to Context Media?

16 A. Yes.

17 Q. And the attempted final update
18 that includes the comments about the reasons
19 for those practices' switch is HAN 006145,
02:52 20 right?

21 A. Yes.

22 Q. And that's Defense Exhibit 223
23 now. Please, go ahead and -- well, generally
24 I should say, is the information in this

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Amy Finley, 4/21/2014

213

1 spreadsheet taken from CMS?

2 A. Yes.

3 Q. And are all the questions that I
4 asked about -- well, let's just run through
5 it again. Was the information entered into
6 CMS by employee's of Patient Point?

7 A. Yes.

8 Q. Did they enter that information
9 in the course of their duties as employees of
10 Patient Point?

02:53

11 A. Yes.

12 Q. Did they do that in the ordinary
13 course of their duties?

14 A. Yes.

15 Q. Does Patient Point keep the CMS
16 database in the ordinary course of its
17 business?

18 A. Yes.

19 Q. And it relies on the information
20 in the CMS database to make important
21 business decisions, right?

02:53

22 A. Yes.

23 Q. The comments in the CMS database
24 are entered by employees at or shortly after

Amy Finley, 4/21/2014

214

1 the time that they have the interactions and
2 conversations reflected in the comments,
3 right?

4 A. Yes.

5 Q. Okay. Please direct your
6 attention to practice number 3488738 Board
7 Certified Rheumatology.

8 A. Okay.

02:54 9 Q. Is this a comment about a
10 cancelation of a practice in the ACN network?

11 A. You're looking at the final
12 comment on this page?

13 Q. Yes.

14 A. Yes.

15 Q. The final comment dated November
16 29th of 2011.

17 A. Yes.

02:54 18 Q. This comment indicates that no
19 incentive was offered to the practice for the
20 switch, correct?

21 A. Correct.

22 Q. And it says that the practice
23 went with RHN because they felt it was more
24 customizable than our program.

Amy Finley, 4/21/2014

215

1 A. Correct.

2 Q. And it also says and that was
3 it. Does that mean that that was the only
4 reason given?

5 A. I don't know if that was exactly
6 her intent behind that comment but it sounds
7 like it. And I know this sort of goes
8 back to -- I mean, obviously there are
9 situations where I believe the incentive was
02:55 10 the trigger for the switch. Obviously there
11 are other reasons besides that but there are
12 times where I believe the incentive was an
13 issue. Sometimes I believe there was the
14 news ticker and the bells and whistles, as
15 you put it earlier, was the reason --

16 Q. Uh-huh.

17 A. -- or in this case they believed
18 that their program was more customizable than
19 ours.

02:55 20 Q. And there's an issue where you
21 think that there are practices that switched
22 because of the gift card that wouldn't say
23 that to a Patient Point employee, right?

24 A. I do believe that there is cases

Amy Finley, 4/21/2014

216

1 where they would not tell us that, yes.

2 Q. And in a sense, that is a reason
3 that would be off the page -- if that's true,
4 it wouldn't necessarily be in these CMS
5 comments.

6 A. No. Because it wouldn't have
7 been something that was discussed if that was
8 the case.

9 Q. And let's say that there are --
02:56 10 you know, it's possible that there are
11 reasons that are not reflected in CMS for one
12 reason or another, right?

13 A. I would say that if they're
14 getting -- like that with the assumption in
15 this situation. She obviously discussed the
16 incentive which is why she put in the comment
17 no incentive offered. If there was no
18 discussion about incentive, then she wouldn't
19 have put any comment about incentive in there
02:56 20 or it could have been something -- because
21 I've seen that -- where they say no incentive
22 mentioned as well. So, again, I think that
23 it's kind of -- I don't think there's one
24 true reason for a cancel.

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217

1 Q. Uh-huh.

2 A. I think that there's
3 different -- you can have -- come up with
4 different reasons why a practice would cancel
5 in any competitor -- any situation, but I do
6 believe sometimes it was because of the
7 incentive, sometimes I believe it was because
8 they felt the bells and whistles were what
9 they wanted and -- and sometimes I believe
02:57 10 they felt like they thought that the program
11 had certain content.

12 Like I said, some of them you've
13 read here to me, some of them had
14 rheumatology content. We have rheumatology
15 content. So it's not that we don't have it
16 and they do. It's just that's what the
17 practice thought. So it kind of varies --

18 Q. Uh-huh.

19 A. -- across.

02:57 20 Q. If the CMS entry is -- gives
21 some other reason besides the incentive --

22 A. Right.

23 Q. -- you would say -- there's no
24 way to prove that that particular practice

Amy Finley, 4/21/2014

218

1 really changed for that reason. They could
2 have changed because of the gift card.

3 A. I don't know how to --

4 MR. BERNAY: Object to the form.

5 A. -- prove that.

6 Q. And what's that?

7 A. What -- I mean, what are you
8 saying?

02:58

9 Q. You're saying that regardless of
10 what it says in CMS, there could be the
11 reason of the gift card and that could be
12 the -- the full and total reason for the
13 switch and there's no way to prove whether
14 that's the case or not.

15 MR. BERNAY: Object to the form.
16 You can answer.

02:58

17 A. It could be. Yes. There could
18 be the -- the incentive could have been the
19 reason and the reason I state that is
20 because, like I said earlier, we did see a
21 case where the practice told us that but yet
22 we later found out that the incentive gift
23 card was why they switched. But again it's
24 not every practice. As you know -- notice

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219

1 here, I don't think that that incentive was
2 offered everywhere and I don't know what
3 point Context Media started doing that and I
4 can't say that that was always the reason. I
5 shouldn't say that's always the reason
6 because obviously there's other reasons as
7 you're stating and pointing out to me here.
8 Does that make sense?

02:59 9 Q. I think so. Although I think
10 what you said earlier is that in any given
11 situation it's possible that the incentive
12 caused the switch.

13 A. I do believe -- yes.

14 Q. Even if a different reason is
15 given.

16 A. I believe that --

17 MR. BERNAY: Object to the form
18 with prior -- characterization of prior
19 testimony but you can answer.

02:59 20 A. Okay. Yeah. I'm not really
21 sure what you're getting at but -- now I've
22 kind of lost my train of thought. I believe
23 the incentive could have been the reason for
24 a cancel. I do believe that there would be

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Amy Finley, 4/21/2014

220

1 instances where the practice may not have
2 told us that was why they switched and they
3 may have given us a different reason. I also
4 do believe though there are practices that
5 just switched because of the bells and
6 whistles maybe not the incentive. It was the
7 news and the ticker. And I believe that
8 there is locations that switched because of
9 the content. They thought theirs was more
10 diabetes specific versus -- I believe there
11 are all of those cases. I don't believe it's
12 just one.

13 Q. Uh-huh.

14 A. Does that make sense?

15 Q. I think so.

16 A. Okay.

17 Q. I guess my question is in any
18 particular instance, knowing that all of
19 those are possible and knowing that there
20 could be reasons that are not in CMS, would
21 there be a way to, you know, prove that the
22 incentive wasn't the reason?

23 MR. BERNAY: Objection.

24 A. I don't know.

Amy Finley, 4/21/2014

221

1 Q. Would you please flip to the
2 comment it's practice number 3547293. I
3 don't want to be presumptuous but maybe I
4 should flip and hand it back and forth?

5 A. What is this --

6 MR. BERNAY: Yeah. Three --
7 3547293.

8 MR. HANKINSON: 3547293. I
9 don't want to cause a distraction. I'm just
10 trying to think of the fastest way to do it.

11 MR. BERNAY: Yeah.

12 A. That's all right. 3547293.
13 There it is.

14 Q. Dr. Schnapp and Barth PA? Yes?

15 A. Yes.

16 Q. And I am looking at a comment
17 dated January 12th, 2010.

18 A. January 12th?

19 Q. It's the second one from the top
20 of the page and it's probably the last page
21 of Dr. Schnapp and Barth.

22 MR. BERNAY: January 10, 2012?

23 A. Okay. I see.

24 MR. HANKINSON: It's the second.

Amy Finley, 4/21/2014

222

1 A. Valerie?

2 MR. HANKINSON: Valerie Kallina

3 would be --

4 A. Is that what you're talking
5 about?

6 Q. -- the practice contact and Lori
7 Smith would be the commenter?

8 A. The comment starts with Valerie
9 called --

03:01 10 Q. Yes.

11 A. -- in to return my call?

12 Q. Yes.

13 A. Okay.

14 Q. Take a moment to review it. For
15 practice 3547293 with the name of the
16 practice being Drs. Schnapp and Barth PA, the
17 practice contact, Valerie Kallina, reported
18 that the reason the office decided to switch
19 to Context was that the doctors wanted to
03:02 20 offer an RA based program. Does that mean
21 rheumatoid arthritis?

22 A. Yes.

23 Q. The characteristics or the
24 program -- of the program probably is what

Amy Finley, 4/21/2014

223

1 was meant. Sound and video segments did not
2 play a role in the decision. It was strictly
3 the topic of the content RA versus primary
4 care, right?

5 A. Right.

6 Q. So here's an example regardless
7 of whether it's your opinion or someone
8 else's opinion that ACN is just as focused on
9 rheumatology as RHN, the practice was
03:02 10 reporting that it found RHN to be more
11 focused and that's why they were switching,
12 right?

13 A. This particular office had our
14 primary care network which is why the content
15 was not geared towards rheumatology and
16 that's why you see in parentheses her
17 comments of RA versus primary care so in this
18 particular case -- but again this kind of
19 also goes back to my point before where I was
03:03 20 stating, you know, they -- she did truly find
21 out in this situation it was the content and
22 it did not have anything to do with the video
23 or the sound segments.

24 Q. It was --

Amy Finley, 4/21/2014

224

1 A. And I would believe that there
2 was probably no incentive in this situation.
3 It was strictly -- strictly content.

4 Q. And specifically the focus on
5 rheumatoid arthritis as opposed to primary
6 care?

7 A. Right.

8 Q. All right. Please flip to
9 practice 3663355.

03:03 10 A. No, I did not just flip to --
11 South Plainfield?

12 Q. Yeah. The very bottom comment
13 on the first --

14 A. That's amazing.

15 Q. -- first page -- that's what
16 qualifies for good at this point in the day,
17 huh?

18 A. I guess.

03:04 19 Q. That's terrible. Creating all
20 this --

21 MR. BERNAY: Great moment in
22 deposition history --

23 MR. HANKINSON: Right.

24 MR. BERNAY: -- volume 235.

Amy Finley, 4/21/2014

225

1 MR. HANKINSON: All right.

2 A. Please mark that.

3 Q. We're discussing South
4 Plainfield Primary Care which switched from
5 the PCN, correct?

6 A. Correct. And we're looking at
7 the last comment?

8 Q. Yeah. The last comment on the
9 page from Dr. Madhu Goyal.

03:04 10 A. Okay.

11 Q. The CMS entry indicates that
12 Dr. Goyal called wanting to cancel in favor
13 of diabetes network. Do you understand that
14 to mean DHN from Context?

15 A. Yes.

16 Q. And then it asked for feedback.
17 Said likes the content more and program
18 provide medical news. Very interactive. Has
19 recipe on diabetes medical related info and
03:05 20 audio and video. Sent cancel survey. Those
21 are the reasons given in CMS for this switch,
22 correct?

23 A. Correct.

24 Q. What is the cancel survey?

Amy Finley, 4/21/2014

226

1 A. There is a survey that we would
2 send to practices after they cancelled to try
3 to provide more feedback.

4 Q. During what time period was that
5 survey sent to practices who canceled?

6 A. This was a manually sent survey,
7 so when the relationship manager -- was more
8 of a judgment call -- felt that they could
9 send this to possibly get some feedback.

03:05 10 Sometimes they would just do it just to do
11 it. There was really no protocol as to when.
12 I mean, ideally you obviously send it after
13 they cancel but it was never a process as to
14 you had to send it to every single practice.

15 Q. It was left to the relationship
16 manager's discretion?

17 A. Correct.

18 Q. Is it -- is it a survey that's
19 general as to whether the cancellation is to
03:06 20 a competitor or to TV or in favor of nothing?

21 A. I don't believe it's
22 that specific. I think it's just more about
23 our content and the services that we provide.
24 It --

Amy Finley, 4/21/2014

227

1 Q. Do you know if the cancel survey
2 asks for reasons for a switch?

3 A. Yes. I believe it does.

4 Q. Where are the results sent?

5 A. It's sent to our research
6 department.

7 Q. And do you know where the
8 results are stored by the research
9 department?

03:06 10 A. I don't know where they store
11 them.

12 Q. And have you seen results of any
13 of those surveys in your job?

14 A. They have shared me -- shared
15 results with me. I believe would do that
16 like once a quarter depending on how many
17 responses they have. We have not had a lot
18 of responses to the survey.

03:06 19 Q. If the -- is the survey like
20 whether one was received back with answers
21 entered into CMS?

22 A. The answers that received? No.
23 That -- it goes into -- I don't know if --
24 what electronic survey. It's a link. It's

Amy Finley, 4/21/2014

228

1 an electronic survey that is sent back to our
2 research department. I'm not sure I know the
3 name of the actual software they use to
4 gather the results back in. They would
5 pretty much quantify them and provide the
6 results to me.

7 Q. Do you know if the cancel survey
8 asks what competitor was switched to if it
9 was a competitor switch out?

03:07 10 A. I don't recall.

11 Q. Would you please flip to
12 location 3668954? Adriana Pop-Moody?

13 A. Yes.

14 Q. Look at the comment dated
15 February 27th, 2012.

16 A. It's two of them.

17 Q. There's two of them. Please
18 look at the bottom one on the page starting
19 with received a fax from Kathy. Are you with
03:08 20 me?

21 A. Yes.

22 Q. Kathy Rock as the practice
23 contact from the Adriana Pop-Moody location
24 explained that a doctor saw RHN at a

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Amy Finley, 4/21/2014

229

1 conference and decided to switch, correct?

2 A. Correct.

3 Q. And the reason they liked RHN,
4 according to Kathy Rock, is that they liked
5 the sound and interviews on the new program,
6 right?

7 A. That's what it states. Yes.

03:09

8 Q. She further explained that the
9 patients have been asking for something more
10 interesting and with sound and RHN fills that
11 request, right?

12 A. Yes. That's what it states.

13 Q. Could you please flip to
14 location 3736209?

15 A. Brian McKnight?

16 Q. Yes. Comment date January 11th,
17 2012. Second from the bottom. Lisa McKnight
18 is the contact for the provider's office,
19 correct?

03:10

20 A. Correct.

21 Q. She said that they switched to
22 RHN because she likes the fact that the
23 program has dialogue and not just pictures.
24 She explained that their segments are a

Amy Finley, 4/21/2014

230

1 little bit longer and are newer which is good
2 when their patients have longer wait times.
3 Many patients visit the office a couple times
4 a month and it seemed to be less repetitive.
5 Did I read that right?

6 A. Yes.

7 Q. So the reason given here,
8 although it may be subjective, is based on
9 the content being longer and less repetitive
03:10 10 for their patients who come a lot to the
11 office?

12 A. Based on this comment here, yes.

13 Q. If there's no contrary comment
14 in CMS then this would be the -- Patient
15 Point's best information about the reason for
16 the switch, right?

17 A. To the best of our knowledge,
18 yes, this would be the reason.

19 Q. Please switch -- flip to
03:11 20 location 3736283.

21 A. Next page?

22 Q. Very good. North Jersey
23 Rheumatology Associates. Look at the comment
24 dated May 20th, 2011. It's at the top. Is

Amy Finley, 4/21/2014

231

1 Hilary Sugar the practice comment -- the
2 practice contact that this comment relates
3 to.

4 A. Uhm. Received e-mail from
5 doctor -- looks like they received an e-mail
6 in from the doctor.

7 Q. So it maybe that --

8 A. Just --

9 Q. -- that Ms. Sugar --

03:11 10 THE REPORTER: I can't hear you,
11 ma'am.

12 THE WITNESS: Oh, sorry. I was
13 reading the comment. Just want to make you
14 aware, we sent yesterday saying that we were
15 going to be canceling our subscription to
16 your service. It's a bit limited, needs more
17 sound and there are some better systems out
18 there. Haven't heard anything back so
19 consider this our official cancellation.

03:12 20 Added e-mail and attachment. Tried calling
21 office but it rolled to an answering service
22 and said they would follow up on Monday to
23 understand the reasons more. Is this due to
24 RHN pressuring them to switch? And point out

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232

1 that HAN benefits.

2 Q. Who's HRM? Heather McGauvran?

3 A. HRM? Yes. Heather McGauvran.

4 Q. So this comment's from

5 Ms. McGauvran?

6 A. Yes.

7 Q. And she intended to follow up to

8 see if RHN pressure had something to do with

9 the switch, right?

03:12 10 A. Yes.

11 Q. But the e-mail from Dr. Guma

12 indicated that Patient Point's ACN network

13 was a bit limited, needs more sound and that

14 there's better systems, right?

15 A. Correct.

16 Q. And if there's no contrary

17 statement to that in CMS, this is Patient

18 Point's best information about the reasons

19 for that switch, correct?

03:13 20 A. That's the best information.

21 Yes.

22 Q. All right. Please flip to

23 location 3742237.

24 A. 374 -- I'm sorry. What was the

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233

1 rest?

2 Q. 3742237. Comment dated
3 January 24th, 2011. It's about the middle of
4 the page. Related to Veena Nayak, MD, right?

5 A. Yes.

6 Q. And this practice switched from
7 ACN, correct?

8 A. They switched from ACN.

03:14 9 Q. Now, this comment indicates
10 that -- well, who is MMM from Patient Point?

11 A. I'm trying to reme -- recall.

12 Q. It seems from the comment that
13 they met in person.

14 A. Margie Moore maybe.

15 Q. In any event, why you don't you
16 read over the comment and --

17 A. It was in Chicago. Okay.

18 Q. Illinois. Yeah. Let me know
19 when you -- when you're ready.

03:15 20 A. Okay.

21 Q. This is a pretty detailed
22 meeting with both Dr. Nayak and the office
23 manager Uma Reddy, right?

24 A. Yes.

Amy Finley, 4/21/2014

234

1 Q. And were you able to confirm
2 there's it's Margie Moore who made this
3 entry?

4 A. I'm almost positive it's Margie
5 Moore. I can't think of anybody else with
6 the initials MM that worked for us.

7 Q. The reason that the --

03:15

8 A. I take that back. I just
9 realized there was -- internally but there
10 was a Michelle Mullins -- or, no, not
11 Michelle. Michelle. I don't recall her last
12 name but I believe it began with an M and she
13 was a sales rep in Chicago, so that leads me
14 to believe that she was probably the person
15 that met with them and -- since Margie Moore
16 was here in Cincinnati, that's why when I
17 said --

18 Q. Uh-huh.

03:16

19 A. -- Chicago earlier I was having
20 a hard time picturing her being in Chicago
21 just to meet with a practice. It's possible.
22 But we did have a sales rep that worked in
23 Chicago.

24 Q. Michelle Mullins --

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235

1 A. Yeah.

2 Q. -- or some last name?

3 A. Something. I can't remember her
4 last name exactly. I'd have to --

5 Q. In any event a Patient Point
6 employee met with Dr. Nayak and Uma Reddy and
7 made this entry, correct?

8 A. Correct. Only a Patient Point
9 employee could enter into the database.

03:16 10 Q. Dr. Nayak's reason for switching
11 to RHN is because she thinks RHN is more
12 engaging and she said instead of short
13 snip-its like yours, they have longer
14 dialogue between actual people. She also
15 said that she likes that RHN has a 90-minute
16 loop to hopefully cover wait time. Do you
17 see that portion of the entry?

18 A. Yes.

03:17 19 Q. Then further down it says,
20 Dr. Nayak said RHN offers some messaging.
21 Your messaging is wonderful for offices that
22 have massage therapy and tai chi and other
23 services they want to promote but my office
24 is more conservative and I'm not really

Amy Finley, 4/21/2014

236

1 interested in that.

2 A. That's referring to our
3 customization feature.

4 Q. Which is a sales point for
5 Patient Point, right?

6 A. Correct.

7 Q. It's a -- considered a
8 competitive advantage.

9 A. Correct.

03:17 10 Q. And Dr. Nayak's simply
11 responding that she is not as interested in
12 that as perhaps other practices?

13 A. She does -- it appears she
14 doesn't need to promote any services at her
15 office.

16 Q. At the bottom this comment says,
17 I told Dr. Nayak that we have no penalties
18 and that she should really look through her
19 contract with them. I tried once more to see
03:18 20 if she would allow our screen to stay as it
21 was virtually silent and would not interfere
22 with other program but she said no as she
23 already has a TV and does not want three
24 screens. That's Michelle or whoever the

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237

1 sales representative who met with --

2 A. Right.

3 Q. -- Dr. Nayak was responding to
4 Dr. Nayak's comment that she felt bad about
5 not dealing with your company directly but
6 time is precious and RHN said that they would
7 take that off my shoulders, take down the
8 equipment, and send to you and would pay any
9 penalties that might be accrued. So in
03:18 10 response to that a Patient Point employee
11 says that we have no penalties. Is that
12 accurate?

13 A. We don't charge the practice
14 anything. No.

15 Q. And that's a general policy.

16 A. Correct.

17 MR. BERNAY: Object to the form.
18 You can answer.

19 A. Correct. We do not charge
03:19 20 our -- our practices.

21 Q. And if that issue ever comes up
22 where a practice is concerned that they'll be
23 charged a penalty, Patient Point would inform
24 the practice that they won't be charged a

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238

1 penalty, right?

2 A. If that were to come up.

3 Q. As it did here.

4 A. It did here, yes. This seems
5 very rare to me but --

6 Q. It's not a secret.

7 A. No, it's not a secret. We don't
8 charge a -- we don't charge a fee.

9 Q. Or a penalty?

03:19 10 A. Or a penalty fee.

11 Q. Please switch to location
12 3744754. 3744754. Oh, it's the next page.
13 To a comment dated October 10th, 2011. Might
14 be the following page. Midway down. Does
15 this comment apply to location 3744754 Joseph
16 I. Sandler, MD?

17 A. The comment that starts with
18 spoke to Jackie?

19 Q. Yes. And is it a switch from
03:20 20 the ACN?

21 A. Switch from ACN.

22 Q. Here -- who is PMB from Patient
23 Point?

24 A. That was Pam Brown.

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239

1 Q. Here Ms. Brown reports that the
2 practice mentioned that the competition has
3 sounds and programming in English and
4 Spanish, correct?

5 A. That's what it states. Yes.

6 Q. Does Patient Point offer content
7 in Spanish?

8 A. No, not on our waiting room
9 screen.

03:21 10 Q. Please flip to location 3747517.
11 Olga N. Popel.

12 A. Okay.

13 Q. Please head to the comment dated
14 December 13th, 2011.

15 A. Which one? There's two of them.

16 Q. The second one --

17 A. Okay.

18 Q. -- from Lori Smith regarding a
19 cancellation of ACN, correct?

03:22 20 A. Correct.

21 Q. The practice contact here is
22 Joanna Mejia, correct?

23 A. Yes.

24 Q. Johanna explained that her

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240

1 physician is a rheumatologist and the RHN
2 content was a better fit for their office,
3 right?

4 A. Yes.

5 Q. And that's even though it's a
6 switch from ACN, correct?

7 A. That's what it states. Yes.

8 Q. And this comment indicates that
9 there's nothing really necessarily wrong in

03:23

10 Ms. Mejia's mind with Patient Point's
11 programing. She just decided to make a
12 change and she'd go back to Patient Point if
13 it comes up.

14 A. That's what it states. Yes.

15 Q. Please look at location 3737565.

16 MR. BERNAY: 373 --

17 THE WITNESS: 373? So we're
18 going backwards?

19 MR. HANKINSON: Yeah.

03:23

20 A. Okay. 737375?

21 Q. Yeah.

22 A. 75 --

23 Q. 65.

24 A. VW?

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241

1 Q. Yes. If you could review the
2 comment and confirm that the CMS entry here
3 indicates that the practice switched due to
4 the focus on rheumatoid arthritis.

5 A. Which comment are we looking at?

6 Q. I'll have to look it up.

7 A. I see it. It's the comment
8 August 2nd. The phone out -- phone in/out.
9 Are you referring to received message from

03:24 10 Dr. Dalai?

11 Q. Yes. The doctor from this
12 practice indicated the content of Patient
13 Point was not specific enough for arthritis
14 patients, correct?

15 A. That's what it states here.
16 Yes.

17 Q. Also it says that the new
18 program has speaking. Do you understand that
19 to mean like sound and voiceover?

03:25 20 A. Yes.

21 Q. And those are the reasons that
22 are given for the switch, correct?

23 A. Correct.

24 Q. Please look at -- this will go

Amy Finley, 4/21/2014

242

1 backwards again -- 3723759.

2 A. Rheumatology Associates of South
3 Florida?

4 Q. Yes. Are there a lot of them?

5 A. There's a few.

6 Q. All right. Yeah. Look at the
7 one that's the second to last on this page
8 dated November 30th, 2012 with Annette
9 DeLuca. Starting with the Annette called in
03:26 10 and LM left message.

11 A. LM left message. It looks like
12 we received their -- our -- our equipment
13 from the practice that was removed by
14 Context.

15 Q. Ms. DeLuca was unaware of her
16 contract with Patient Point and the alleged
17 enrollment agreement, is that right?

18 MR. BERNAY: Take your time to
19 read the comment.

03:27 20 A. Okay. Can you repeat the
21 question?

22 Q. Sure. And I'll actually ask a
23 new question. Lori Smith asked Annette
24 DeLuca at the Rheumatology Associates of

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243

1 South Florida if Context said anything about
2 our contract and Ms. DeLuca said no, and then
3 said we did not have a contract, did we.
4 Right?

5 A. It says we did not have a
6 contact, did we, but I believe that was
7 probably meant to be contract.

8 Q. And that's what Ms. DeLuca
9 responded?

03:27 10 A. That's the way she responded to
11 Lori, yes.

12 Q. And the reason given for the
13 switch to Context is that the docs were ready
14 for a change and they liked the audio on the
15 program, right?

16 A. Yes. That's what it states.

17 Q. All right. Please flip to
18 3691607.

19 A. 369 --

03:28 20 Q. Uh-huh. 3691607.

21 A. Linden Medical Group.

22 Q. Yes. If you could review the
23 comment on April 23rd, 2012. Did Ms. Bialy
24 from the Linden Medical Group indicate that

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244

1 the doctor liked the new program from Context
2 Media because it could be personalized more?

3 A. That's what it states. Yes.

4 Q. And she also said that the
5 company DHN did not present themselves as
6 HAN, correct?

7 A. Correct.

8 Q. And that she knew it was a
9 different company --

03:29 10 A. Yes.

11 Q. -- and switched anyway.

12 A. Correct.

13 Q. I only have about two more hours
14 so I'll stop here.

15 A. You only have two more hours?

16 Q. I'm just joking.

17 A. Oh.

18 Q. Sorry. That wasn't fair.

19 VIDEOGRAPHER: No further

03:29 20 questions?

21 MR. HANKINSON: From me.

22 MR. BERNAY: From Tom.

23

24

Amy Finley, 4/21/2014

245

1 DIRECT EXAMINATION

2 BY MR. BERNAY:

3 Q. I'm just gonna ask two or three
4 real quick questions, Amy, because I know
5 you -- we appreciate your time.

6 A. No. That's fine.

7 Q. I don't want to take up too much
8 time. I just want to clarify some of your
9 testimony on the record and thinking back to
03:29 10 your first deposition as well.

11 Practices switch from Healthy
12 Advice to Context Media for a host of
13 reasons, is that right?

14 MR. HANKINSON: Objection to the
15 form.

16 A. Correct.

17 Q. And some of those reasons
18 involve misrepresentations made by Context
19 Media to the practice.

03:30 20 MR. HANKINSON: Objection.
21 Leading.

22 A. Correct.

23 Q. And you -- you testified earlier
24 to the extent that an incentive could play a

Amy Finley, 4/21/2014

246

1 role in a practice's decision to switch, is
2 that right?

3 A. Yes. It could play a role.

4 Q. Do you think that an incentive
5 alone would have been the sole reason that a
6 practice switched?

7 A. Maybe in some cases. Not in all
8 cases.

03:30

9 MR. BERNAY: That's all I've
10 got.

11 RECROSS-EXAMINATION

12 BY MR. HANKINSON:

13 Q. Earlier you did say that you
14 thought that in every case when an incentive
15 was offered that that was the reason for the
16 switch, didn't you?

17 A. I did state that. Yes.

18 Q. And did you change your mind
19 over the course of today or --

03:31

20 A. Well, I think that I -- just
21 being a little flustered with all of this I
22 think but I do believe that, like I was
23 stating earlier, there are some cases where
24 it is due to content. I think there's some

Amy Finley, 4/21/2014

247

1 cases where it's due to bells and whistles
2 and I do think that there's some cases where
3 it was due to incentive. Again, I think it's
4 all subjective to the practice and what was
5 offered or provided or told to them.

6 Q. Each case would have to be
7 evaluated individually to know the cause of
8 the switch.

9 A. That would be fair. Yes.

03:31 10 Q. Okay. No further questions.

11 MR. BERNAY: No further
12 questions.

13 VIDEOGRAPHER: We're off the
14 record at 3:30:07.

15

16

17

AMY FINLEY

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* * *

22 (DEPOSITION CONCLUDED AT 3:30 p.m.)

23

* * *

24

Amy Finley, 4/21/2014

248

1 C E R T I F I C A T E

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I, Deanne Cartwright, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that AMY FINLEY was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotype and transcribed by me by means of computer; that the transcribed deposition was submitted to the witness for examination and signature and that signature may be affixed out of the presence of the Notary Public-Court Reporter. I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio this 6th day of May, 2014



Deanne Cartwright

My commission expires: Deanne Cartwright
August 4, 2018 Notary Public - State of Ohio

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